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Raising Standards and Improving the Quality of Road Works in Scotland

A Consultation

1. Ministerial Foreword

When Derek Mackay commissioned an independent review of the Office and functions of the Scottish Road Works Commissioner in August 2015, he wanted to build on the existing strengths that we have in Scotland, and improve on the regulation, and enforcement of road works.

The independent consultant, Jim Barton, a Chartered Engineer and former director of Transport Scotland, felt the only way he could do justice to the brief was to look at the sector as a whole, and not just at the Commissioner's Office.

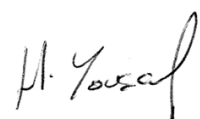


I was particularly pleased to receive the “Barton Report”, it provides an important litmus test on the regulation of road works in Scotland. The essential message is that the system is not fundamentally broken, but that there is scope for improvement. Jim Barton went to great lengths to ensure that his consultation was as inclusive as it could be. Those I have spoken to, have been full of praise for the level of engagement throughout the review process.

Why is this so important? Well mention ‘road works’ and for most people it will conjure up the image of traffic cones, delays, queuing traffic, and added stress on top of their already busy lives. Road works are the essential interface between two of our daily priorities. We want to get to where we are going quickly and on time, and at the same time we expect water to flow when we turn on a tap, and the electricity or gas to be there when we want to boil the kettle. We lead busy lives, so we value our time, and expect our utility services to be there when we need them.

Our road network is one of Scotland's most important assets. It's an asset that we need to maintain, and in the current economic climate that's quite a challenge for all of our roads authorities. Road works are necessary, not only to maintain the road asset, but also to allow utility companies to inspect, maintain, and repair their plant and apparatus. In order to minimise the impacts of any road works, there needs to be good planning and coordination between utility companies and roads authorities, and the provision of timely accurate information for road users and others.

I believe there is room for improvement in the quality of reinstatements, that the planning and coordination of road works could be better than it is at present, and that we can make better information available about road works for road users and pedestrians. This consultation presents a package of measures to take forward the recommendations in Jim Barton's report. I believe that the proposed measures will provide the Scottish Road Works Commissioner with greater powers, promote quality, and improve the quality of information relating to road works. I welcome your responses to the proposals set out below.



HUMZA YOUSAF

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3. Introduction

Overview

- 3.1. Scotland's roads are vital for economic prosperity and for the quality of life of its people. The Scottish road network is one of its most valuable assets and it is vital that it is maintained in an appropriate condition.
- 3.2. In 2015 when Derek Mackay, the then Minister for Transport and the Islands, appointed the current Scottish Road Works Commissioner ("SRWC"), he also took the opportunity to commission an independent review of the SRWC's Office and functions. While Scotland already leads the UK in the planning and coordination of road works, having the only SRWC for the sector, and an all-Scotland single register of road works (the Scottish Road Works Register ("SRWR")), it is felt that there is still scope for improvement to build on these existing strengths. The Scottish Ministers are committed to improving how road works, including utility road works, are managed in Scotland.
- 3.3. The resultant report written by independent consultant Jim Barton BSc, CEng, MICE, FCIHT, the "Barton Report"¹, made a number of recommendations to improve the regulation of road works in Scotland. This includes improvements in the availability of information, measures to support improvements in the quality of road work reinstatements, and improving enforcement and strengthening the existing powers available to the SRWC and to roads authorities.
- 3.4. This consultation seeks views on proposals for improvements to the regulation of road works in Scotland which includes taking forward the accepted recommendations of the Barton Report.

Definitions

Term	Definition
Scottish Road Works Commissioner (SRWC)	An independent public official established under section 16 of the Transport (Scotland) Act 2005 - accountable to Scottish Ministers.
Scottish Road Works Register (SRWR)	Central tool for Scottish roads authorities and utilities to assist with planning/coordination of road works; source of data for indicators to determine performance of the undertaking of road works; accurate source of information for the public and interested organisations of future, ongoing and past road works.

¹ <http://www.transport.gov.scot/report/review-office-and-functions-scottish-road-works-commissioner-9283>

Vault - Community Apparatus Data Vault System	Supplementary to the SRWR - provision of information to Vault is currently voluntary.
Primary Legislation	An Act of the UK or Scottish Parliament.
Secondary Legislation (such as a Scottish Statutory Instrument (SSI))	A Statutory Instrument, normally an Order or regulations.
Code of Practice	Working documents that contain a set of rules and guidance often underpinned through primary and secondary legislation.
Direction (SRWC Powers of..)	Instruction issued by the SRWC to road works industry where certain action is to be taken.
Plant Information Request (PIR) ²	Prior to application for a road permit, make a Plant Information Request (to local authority) for the site to check if there is any utility company or other private apparatus under the road, to prevent damage to other plant.
Roads Authorities and Utilities Committee (RAUC(S))	Comprises representatives of the Roads Authorities and the Scottish Joint Utilities Group together with representatives of the Scottish Government and the SRWC.
Fixed Penalty Notice (FPN) (for road works offences)	Issued by roads authorities to utility companies for certain road works offences set under the Road Works (Fixed Penalty) (Scotland) Regulations 2008 and the Roads (Scotland) Act 1984 (Fixed Penalty) Regulations 2008.
Inspection (Category A)	Inspection of road works in progress.
Roads Authorities	The 32 Scottish Local Authorities plus Transport Scotland for trunk roads.

²for developers and private individuals who wish to undertake works in roads

Responding to this consultation

About this Consultation

- 3.5. Consultation is an essential part of the policy making process. It gives us the opportunity to seek your opinions. This consultation details issues under consideration and asks you questions about what we are proposing. After the consultation is closed we will publish responses where we have been given permission to do so.
- 3.6. Responses are analysed and used as part of the policy making process, along with a range of other available information and evidence. Responses to this consultation will help to inform the development of future laws and guidance on Road Works in Scotland.

Deadline

- 3.7. This consultation closes at midnight on 12 October 2017.

How to respond

- 3.8. To encourage wide participation, the Scottish Government has created a number of ways for you to engage in the consultation. You can respond online, by email or by post.
- 3.9. The consultation will also be available in alternative formats on request, including Large Print, Braille and Easy Read.

Respond Online

- 3.10. To respond online please use the Scottish Government's Consultation Hub, [Citizen Space](#). You can respond in English or British Sign Language (BSL) using this method. You can save and return to your response at any time while the consultation is open. But please ensure that your response is submitted before the consultation closes at midnight on 12 October 2017.
- 3.11. You will automatically be emailed a copy of your response after you submit it. If you choose this method you will be directed to complete the Respondent Information Form. The Respondent Information Form lets us know how you wish your response to be handled, and in particular whether you are happy for your response to be made public.

Table of response methods

Response method	Specific instructions
Online	Through Citizen Space. The specific link is https://consult.scotland.gov.uk/transport-scotland/quality-of-road-works-in-scotland/
Correspondence (email)	Send an email to roadworksconsultation2017@transport.gov.scot with the responses to the consultation questions.

	Please include the Respondent Information Form.
Correspondence (postal)	<p>Send your responses in English to:</p> <p>Road Works Policy Transport Scotland Area 2D-North Victoria Quay Edinburgh EH6 6QQ</p> <p>Please include the Respondent Information Form (see Annex A)</p>

- 3.12. With each of these methods you need to include your Respondent Information Form because this lets us know how you wish your response to be handled, and in particular whether you are happy for your response to be made public. You can find this in Annex A in this document.

Next Steps

- 3.13. After the consultation has closed we will analyse all the responses received and use your feedback to help inform the development of future laws and guidance on road works. Where permission has been given, we will make all responses available to the public at <https://consult.scotland.gov.uk>. The responses to the consultation and analysis will be published in November 2017.

Need assistance?

- 3.14. If you need support in answering this consultation or alternatively have a query about the consultation process, or a complaint about how this consultation has been conducted you can send your query by email to roadworksconsultation2017@transport.gov.scot

or by writing to:-

Road Works Policy
Transport Scotland
Area 2D-North
Victoria Quay
Edinburgh
EH6 6QQ

Background

- 3.15. Road works are a necessary fact of life if we wish to have a safe and well maintained road network and to continue to enjoy a range of utility services such as gas, water, drainage, electricity and telecommunications.



Figure 1 - The public face of road works

- 3.16. The vast majority of road works are either:
- utility company works to place, repair, renew or improve utility service pipes and cables; or
 - roads authority works to repair, renew or improve roads.
- 3.17. The legislation under which works in roads are undertaken in Scotland is the New Roads and Street Works Act 1991³ (NRSWA) or the Roads (Scotland) Act 1984 ("RSA"). NRSWA was revised and updated by the Transport (Scotland) Act 2005⁴ and is supported by a series of regulations. Under NRSWA, roads authorities are deemed to be "road works authorities" and as such have an obligation to coordinate their own works and those of utility companies, which in turn are obliged to cooperate with the roads authorities.
- 3.18. Utility companies have statutory rights which allow them to place, repair, renew or improve their pipes or cables in roads, subject to meeting certain duties. Under NRSWA such utility companies are known as "Undertakers".

Next Steps

- 3.19. The Programme for Government announced by the First Minister on 6 September 2016 included a commitment to bring forward legislation later

³ <http://www.legislation.gov.uk/ukpga/1991/22/contents>

⁴ <http://www.legislation.gov.uk/asp/2005/12/contents>

in this Parliament to improve the regulation of road works in Scotland and to enhance and improve the role of the Scottish Road Works Commissioner. Some of the proposals set out in this consultation are intended to form part of a Bill. However these are part of a wider package of regulatory reforms, many of which do not require new primary legislation to implement. Some can be introduced through secondary legislation, and/or codes of practice. Nevertheless, we feel it is important for stakeholders to see how each individual proposal fits into the planned overall regulatory regime for road works in Scotland, therefore these proposals are also included in this consultation.

- 3.20. Taking forward the proposals covered in this consultation may require changes to existing Acts, or secondary legislation, or it may be possible to deliver the proposals through codes or practice, guidance, or other means (see figure 2 below). We have indicated under each heading the proposed basis on which each measure can be taken forward.

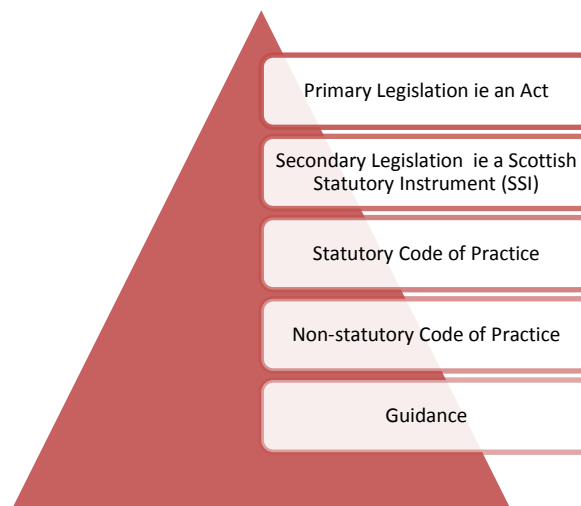


Figure 2 - Possible ways to implement proposals

- 3.21. We will publish an analysis of consultation responses received. This will influence proposals within any Bill which is subsequently introduced in the Scottish Parliament. Complementary measures will be taken forward under separate processes, which in the case of secondary regulations, will involve further separate consultation.

4. Part 1 - Improving quality

Introduction of 'Quality Plans'

To be delivered by:

- Primary Legislation *and*
 - Secondary Legislation
-

- 4.1. At the moment, the balance of the monitoring regime places too much emphasis on the inspection work undertaken by roads authorities to check that road openings have been properly reinstated. We need to move away from the onus being on inspections highlighting defects, to a regime which has quality assurance built-in. This means placing more of an onus on those undertaking road works to show they have reinstated the road properly through the mandatory use of quality plans.
- 4.2. Moving the balance of the current regime from inspection to quality assurance will take some time, however the creation and introduction of quality plans will be an important first step. The Scottish Ministers have asked the Roads Authorities and Utilities Committee (Scotland) (RAUC(S)) to devise a system of quality plans, and have asked them to report back with proposals by the end of 2017.
- 4.3. In order to facilitate the introduction of a mandatory requirement for quality plans to be in place for utility road works, we propose that the Scottish Ministers should be given the necessary power to make regulations, and that this is included in any future Bill.

4.4. Question 1 - Should utility companies be required to produce quality plans for proposed road works?

Reinstatement guarantee periods

To be delivered by:

- Secondary Legislation *and*
 - Statutory Code of Practice
-

- 4.5. The introduction of quality plans will be at the heart of a regime designed to promote quality and the principle of getting it right first time. The quality of utility reinstatements is currently backed up by a guarantee period of 2 to 3 years depending on the depth of the excavation.

- 4.6. Roads authorities have called for the period of guarantee to be significantly extended, perhaps up to 10 years. On the other hand, the utility companies argue that there is little empirical evidence to suggest that a reinstatement which does not fail within the current guarantee period goes on to subsequently fail once the current guarantee period has ended. While there is some merit in this argument, there is nevertheless compelling anecdotal and other evidence to suggest there is a problem. Figure 3 (below) shows an example of a utility reinstatement which appears to be having a detrimental effect on the surrounding road surface.
- 4.7. Current performance measurement of utility reinstatements looks only at the compressed 'blacktop' surfacing and not at the compaction and composition of the backfill material in the unbound layer. This is an issue we hope to address through the introduction of the quality plans referred to above.
- 4.8. While there have been calls for guarantee periods of 10 years or more, the reality is that there are constraints on the length of time over which it is a practical option to track various utility reinstatements.
- 4.9. We also believe it would simplify matters if there was to be a single (6 year) guarantee period which would apply in all cases regardless of the depth of the reinstatement trench.

4.10. Question 2 - Should there be a single guarantee period offered on utility reinstatements of 6 years regardless of the depth of excavation?



Figure 3 – example of a reinstatement which appears to be having an effect on the surrounding carriageway

Quality Plans and the latent defect process

- 4.11. Roads Authorities are able to raise issues regarding reinstatements which appear to be failing although the guarantee period has expired through a process where latent defects can be raised under Section 2 (2.5) of the Code of Practice for the Specification for the Reinstatement of Openings in Roads (SROR, see below).
- 4.12. The current process involves arbitration which if unsuccessful can be pursued through the civil courts on summary application to a Sheriff. This process is rarely, if ever, used because of the inherent cost considerations for either side within the legal process. Utility companies argue that as a result of the latent defect process, they in effect have to carry an on-going financial risk for each reinstatement without end. There seems little point in having a process which is not being actively used.
- 4.13. We therefore propose that the introduction of quality plans should include a commitment to review their effectiveness after a suitable period (perhaps 6 years). If the introduction of quality plans has led to an overall improvement in the quality of reinstatements across Scotland, then we will

revisit the request made by the utility companies to remove the latent defect process. Any proposal to amend or repeal the latent defect process will be subject to further consultation.

- 4.14. **Question 3** - If introduced, should the impact of quality plans be reviewed after a suitable period (perhaps 6 years), and the necessity of the latent defect process be assessed?

Clarify the basis for the Specification for the Reinstatement of Openings in Roads (“SROR”)

To be delivered by:

- Primary Legislation
-

- 4.15. The SROR provides both a technical specification and a required standard for reinstatements undertaken by utility companies. Over the years the SROR has been refined and gradually expanded to include the complete process necessary to carry out road works, encompassing excavation, reinstatement, and a variety of ancillary processes.
- 4.16. A question has arisen about whether the broad scope of the SROR as it is currently constituted, is fully recognised within the relevant enabling provisions in Section 130 of NRSWA.
- 4.17. The SROR plays a crucial role in helping to drive up and maintain quality standards in road works. We believe it will be helpful, therefore, to clarify that the enabling provision in NRSWA is suitably wide enough to allow for an all-encompassing SROR.
- 4.18. We propose to clarify the ability of the Scottish Ministers to make a code of practice which encompasses all of the activity needed at a road work site e.g. signing lighting and guarding, excavation, reinstatement, and the guarantee period.

- 4.19. **Question 4** - Should we clarify that the scope for a code of practice on reinstatement (currently the SROR) includes all activity relating to the execution of road works e.g. signing lighting guarding, excavation, reinstatement, and guarantee period?

5. Part 2 - Improving the availability of road work information

New noticing obligations – background

- 5.1. The desire for real time information has increased significantly over the last decade. With the availability of smart phones/handheld devices and improved network availability, the desire for road works information, in particular with respect to location and duration, has increased substantially. This is true both for the general public and for those organisations working in the road works industry.
- 5.2. At the moment, the vast majority of information on road works is provided through notices placed on the Scottish Road Works Register (SRWR). The SRWC provides a public facing website which shows planned road works extracted from the SRWR. The information provided includes a works reference, the location of the work, dates, organisation promoting the works and contact details. However, the use of this information is somewhat limited in terms of access by the general public and non-SRWR users. Those undertaking road works currently have direct access to the SRWR allowing them to coordinate and cooperate, i.e. fulfil their duties under NRSWA.



Figure 4 – Public facing online portal of the Scottish Road Works Register

- 5.3. The information required in notices placed on the SRWR is set out in the Road Works (Scottish Road Works Register, Notices, Directions and Designations) (Scotland) Regulations 2008⁵. Further details are set out in the Code of Practice for the Coordination of Works in Roads, which is a Ministerial Code of Practice (2013)⁶. Copies of this code of practice, relevant legislation and guidance can be found on the SRWC website at:

<http://www.roadworksscotland.gov.uk/LegislationGuidance/LegislationGuidance.aspx>

⁵ <http://www.legislation.gov.uk/ssi/2008/88/contents/made>

⁶ <http://www.roadworksscotland.gov.uk/nmsruntime/saveasdialog.aspx?IID=1245&SID=80>

- 5.4. Once the works have started on site an actual start date is entered into the SRWR followed by a works completion (works clear or closed, discussed later) and finally a reinstatement notice for utility companies. This is the minimum information, as provided for in legislation.
- 5.5. The SRWR has additional provisions should organisations wish to use them, however in many cases only the very minimum data is entered. The legislative provision at this time, provides for coordination and cooperation purposes primarily. However, given the current economic drive towards improved efficiency and quality, the provision of more detailed information has been considered.
- 5.6. Anecdotal evidence identifies the limitations in the current legislation leading to unproductive site visits by roads inspectors and confusion by members of the public. Members of the public have a desire to have access to more detailed information about their usual routes. Therefore, it has been suggested that better provision of information on road works would support a range of organisational and economic outcomes, at both strategic and local levels, that are required to be delivered by the road works community and for road users alike. Improved information on road works would help with diversion planning, reducing congestion, improving productivity with a more direct impact on reducing pointless site visits by roads authority inspectors where they find on arrival that there are no road works taking place at that time.

Notification of the actual start date

To be delivered by:

- Primary Legislation *and*
- Secondary Legislation

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- 5.7. The provision of the date when works actually start has long been discussed among the road works community, however it is not currently required by the legislation. The current position is that planned works are entered into the SRWR with an expected start date provided on the works notice. Depending on the type of planned works the notice has a validity period of up to 7 days, which means that in certain cases, although the works notice specifies an expected start date of X it may be up to X plus 7 days before works commence. The organisation undertaking the works has the period of their notice in which to complete the works. This has the potential to create confusion for the public and can result in wasted inspection hours by the roads authority.

- 5.8. Further to this, once works start “on site” , the actual start date, i.e. when the road works commenced, is also required to be entered into the SRWR, however, again there are a variety of timescales governing this depending on the severity and type of works (details of the timescales are provided in the Code of Practice).
- 5.9. In some cases timescales only require that information be provided the following day, this can mean information is over 24 hours old before it is included in the SRWR. This can cause confusion for members of the public and importantly, in terms of productivity, confusion over when operatives are actually working. This can result in lost time for inspectors which incurs a financial cost and time lost.
- 5.10. Presently, for planned works, notice of the actual start date is required to be provided, in some cases, by 12 noon on the next working day following the works start. This can be in excess of 24 hours after works begin on site, therefore for some works, this can mean that operatives have completed the works and left the site before the actual start is logged.
- 5.11. In most cases a notice placed on the register relating to planned works is valid for 7 days, or 3 days depending on the traffic-sensitivity of the road concerned. While on the one hand this provides a degree of flexibility relating to the planning and execution of works, it also adds to the uncertainty relating to the actual number and location of active road work sites at any one time. This uncertainty leads to confusion and reputational risk for the sector in the minds of road users. This is a particular problem for transport managers and planners working for bus operators, freight transport providers and local authorities generally. The lack of reasonably accurate information about the location and duration of road works adds to the public perception that road works are one of the major contributors to congestion, particularly in urban areas.
- 5.12. We propose that the actual start of work should be notified within 2 hours of work commencing on site. Furthermore we propose that the validity period for notices of most planned road works should be reduced to 4 days and 2 days depending on the traffic sensitivity of the road. This would provide useful and more accurate information for inspections, public information and in some cases route planning. Where works are started out of hours, e.g. emergency works, we propose that information should be entered within 2 hours of the commencement of business on the following working day.

Notification of the completion of road works

To be delivered by:

- Primary Legislation
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- 5.13. In a similar vein to the notification of actual start dates and times, the entry of works completion notices is not required at the time of completion. They can range from up to 16:30 the next working day or by noon the following day, therefore there can often be a time lag of over 24 hours before these are entered. Based on the provision of information as outlined above, works of short duration can take place and be completed before the start is even logged in the SRWR as an “actual start”. It would be preferable if this information was logged within a shorter timeframe.



Figure 5 - During and after road works

- 5.14. Section 129 of NRSWA sets out the requirements for works completion notices. Works completion notices are generally split into works clear notices and works closed notices (see below), with each bound by the same timescales as set out above.
- 5.15. We propose that the actual completion of work should be notified within 2 hours of work finishing on site. This would provide useful and more accurate information for inspections, public information and in some cases route planning. Where works are finished out of hours, e.g. emergency works, we propose that information should be entered within 2 hours of the commencement of business on the following working day. The proposed changes to Works Clear notices and Works Closed notices are further discussed in the following section.

Notification of works clear

To be delivered by:

- Primary Legislation

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- 5.16. A works clear notice is entered into the SRWR where an interim reinstatement has been applied, e.g. where an organisation intends to

come back to the works site and complete the job with a permanent reinstatement. This could be when the works are at a stage that the traffic management can be removed and the facility can be used as normal, albeit temporarily. Timely information on works clear would allow a better understanding for the public and may lead to better coordination, as other organisations would know when works are clear.

- 5.17. We propose that works clear should be notified within 2 hours after the road is temporarily available to traffic. This would provide useful and more accurate information for inspections, public information and in some cases route planning. Where works are clear out of hours, e.g. emergency works, we propose that information should be entered within 2 hours of the commencement of business on the following working day.

Notification of works closed

To be delivered by:

- Primary Legislation
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- 5.18. A works closed notice is entered into the SRWR when works are finished and the site has been cleared, in this case the reinstatement is permanent and the road/footway(path) can return to normal use. Timely information on works closed would allow a better understanding for the public and may lead to better coordination as other organisations would know when works are finished in terms of coordination of works, providing additional opportunities and minimising disruption.

- 5.19. We propose that the closure of a road work site should be notified within 2 hours of the road being returned to normal use. This would provide useful and more accurate information for inspections, public information and in some cases route planning. Where works are closed out of hours, e.g. emergency works, we propose that information should be entered within 2 hours of the commencement of business on the following working day.

- 5.20. **Question 5 (a)** - Should actual starts, works completed, works cleared, and works closed notices be notified within 2 hours, or within 2 hours of the start of the next business day if outwith office hours?

- 5.21. **Question 5 (b)** – Should the validity period for notices placed onto the SRWR in relation to planned works be reduced, the proposal being that they be set at 4 days or 2 days depending on the traffic sensitivity of the road?

Placing plant information on the SRWR

To be delivered by:

- Primary Legislation

- 5.22. The SRWR is a system used by all roads authorities and utility companies in Scotland to coordinate their works. It allows them to share details of where they intend to work and what they intend to do.
- 5.23. Part of the information shared relates to requests for information on the location of underground apparatus which may affect these works (using Plant Information Requests (PIR)). Historically this information has been provided using a combination of proprietary systems such as maps sent by email, access to websites, distributed on CDs containing the data or printed paper plans.
- 5.24. Several years ago the Community Apparatus Data Vault System (“Vault”) was created. The system was intended to centralise this information on the SRWR, adding apparatus information alongside details of where works are taking place. Crucially, however, the provision of information to Vault is currently done on a voluntary basis.

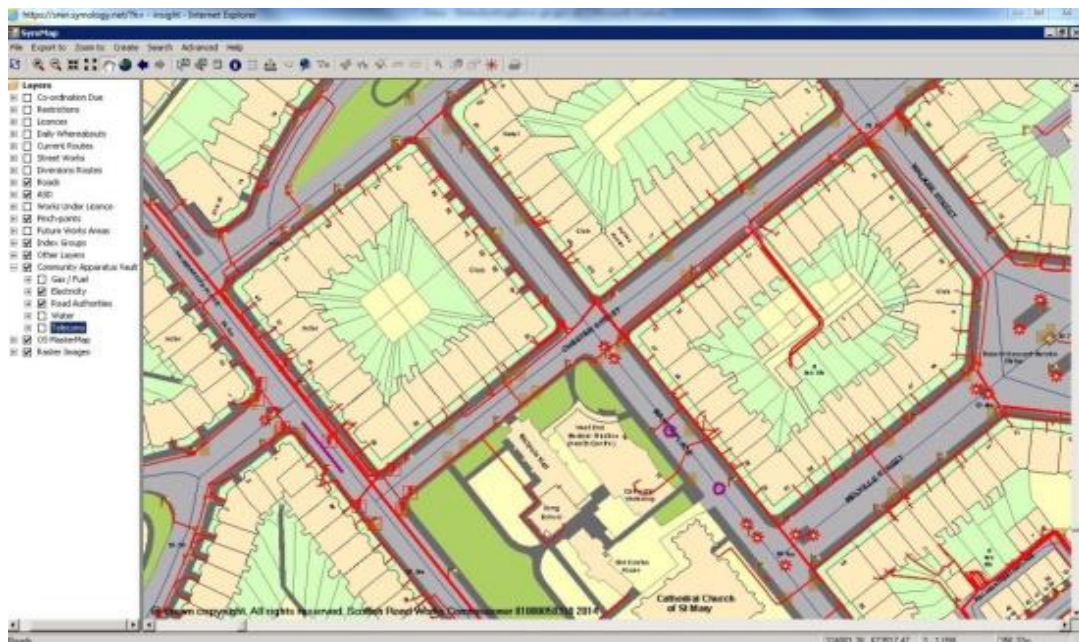


Figure 6 - VAULT Screenshot

- 5.25. Before an excavation takes place it is essential that the workers on site have accurate and up to date information about what lies beneath the surface. It is a requirement under Health and Safety regulations (HSG47) to share this information to help prevent injury to operatives and costly

damage/disruption to services. Vault is seen as a simple and effective way to provide this information.

- 5.26. Presently, all of the major utilities in Scotland, as well as the majority of the roads authorities have now supplied data to Vault, with the only notable exception being the larger telecom organisations.
- 5.27. The current system is recognised as an indispensable tool in the event of emergency work. However, as data submission is currently voluntary the database is not complete.
- 5.28. Evidence provided by the SRWC suggests that telecoms companies utilise this service frequently although do not provide their own information as concerns have been voiced about the security of the information and the way in which it is kept.
- 5.29. We propose to make provision of plant data to Vault as part of the SRWR a mandatory requirement.

5.30. Question 6 - Should the provision of plant information to the Scottish Road Works Register be made mandatory?
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Remove obligation on the Scottish Road Works Commissioner relating to making the Scottish Road Works Register available for public inspection

To be delivered by:

- Primary Legislation

-
- 5.31. The security of commercially sensitive plant information has been raised as one of the main concerns by utility companies who were approached to place their plant information into Vault on a voluntary basis. In contemplating incorporating Vault into the statutory SRWR, it is necessary to review how access to information within the SRWR is controlled.
 - 5.32. Current statutory provisions provide for access to the SRWR in one of three ways. The first is as a user of the register. The second method of access is through the current obligation on the Commissioner to make the SRWR available for inspection. The final method is that an enquiry falls to be considered under one of the public information access regimes using either the Freedom of Information (Scotland) Act 2002 ("FOISA"), or under the Environmental Information (Scotland) Regulations 2004 ("EIRs").
 - 5.33. Information access regimes such as FOISA or EIRs provide for exemptions from the presumption that information should be released. This includes in relation to commercial sensitivity albeit this exemption is

subject to a public interest test. On the other hand, there are no such exemptions from the duty on the SRWC to make the SRWR available for inspection.

- 5.34. The obligation to make the SRWR available for inspection is more suited to a written ledger. In practice the SRWR is a map based electronic database. There is a publicly accessible portal on the internet, and work is underway to make that published information available to download in a machine-readable format. The existing information access regimes along with the active publication of relevant data would seem more than capable of satisfying any appetite from the general public for road works information. On the other hand, the obligation to make the SRWR available for inspection lacks some of the necessary safeguards that the alternative methods provide.
- 5.35. We propose therefore to repeal S112A(6) and S112A(7) of NRSWA and remove the obligation on the Scottish Road Works Commissioner to make the SRWR available for inspection. We are open to the alternative that the duty to make the SRWR available for inspection is replaced with a duty on the SRWC to actively publish information relating to the location of planned and actual road works.

- 5.36. **Question 7(a)** – Should the obligation on the Scottish Road Works Commissioner to make the Scottish Road Works Register available for inspection be repealed?
- 5.37. **Question 7(b)** – Should the duty to make the Scottish Road Works Register available for inspection be replaced with a duty on the Scottish Road Works Commissioner to actively publish information relating to the location of planned and actual road works?

6. Part 3 - Improving consistency

Safety at Road Works Sites

To be delivered by:

- Primary Legislation *and*
 - Statutory Code of Practice
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- 6.1. Utility companies are required to comply with “Safety at Street Works and Road Works A Code of Practice”⁷ when executing road works. Within the road works community the code of practice is commonly referred to by its appearance as “the Red Book”. The Red Book does not currently apply to similar roads authority works.
- 6.2. Utility companies argue that the regulatory regime needs to be more balanced and that certain rules and standards which they are required to work to should equally apply to similar road works being undertaken by roads authorities. We believe that having a common set of safety standards which can be applied at all road work sites, regardless of who is carrying them out, should provide greater consistency in safety standards for road workers, road users and pedestrians.

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| 6.3. Question 8 - Should “Safety at Street Works and Road Works A Code of Practice” apply equally to roads authority and utility road work sites? |
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Consistent requirements for safety related qualifications

To be delivered by:

- Primary Legislation *and*
 - Secondary Legislation
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- 6.4. Under Section 126 of NRSWA, those executing road works on behalf of a utility company have to meet certain minimum qualification standards. Essentially at least one operative at each road work site, and the supervisor, must hold a qualification which is relevant to those works.

⁷ <http://www.roadworksscotland.gov.uk/nmsruntime/saveasdialog.aspx?IID=1416&sID=80>

- 6.5. Regulations⁸ being introduced during 2017 will also make it a mandatory requirement for each trained road worker and operative to also hold a qualification in two fundamental basic qualifications:
- The “Signing, Lighting and Guarding” of a site – essentially about the traffic management, setting out of cones, signs, signals and necessary pedestrian measures; and
 - The “Location and Avoidance of Underground Apparatus”, essentially about how to detect pipes and cables when digging in the road, and how to properly deal with them when they are encountered.



Figure 7 – Road works (courtesy) information board⁹

- 6.6. We think that it makes sense to apply these basic safety related qualifications to any squad digging in the road regardless if it is a utility or roads authority road works site.
- 6.7. While many utility companies and roads authorities already apply more exacting standards than the minimum training requirements, we believe that it may also be appropriate to raise the minimum threshold of the numbers of staff who must be appropriately trained at any one road work site. One option might be to raise the minimum number required to more than one, or perhaps to require all operatives at a site to hold relevant qualifications.

6.8. **Question 9** - Should utility and roads authority workers be required to qualified in the “Signing Lighting and Guarding” of a site, and also in the “Location and Avoidance of Underground Apparatus”?

⁸The Road Works (Qualifications of Supervisors and Operatives) (Scotland) Regulations 2017 — <http://www.legislation.gov.uk/ssi/2017/147/contents/made>

⁹The requirements for information boards can be found in the code of practice (“COP”) referenced at footnote 6. In particular an information board must be displayed at every road works site except mobile works, short duration works and minor works that do not involve excavation. Even then the COP suggest that Information boards are still highly desirable at these sites. The information board must give the name of the organisation undertaking the works, any principal contractor and an emergency contact telephone number. Wherever practical, it should also contain other information that will be helpful in explaining to the public why the work is being done, how long it will take and a message apologising for inconvenience.

- 6.9. At present the legal minimum requirement is that at least one person on a road work site must hold relevant formal qualifications for the work being undertaken. We are aware, however, that many companies exceed this minimum requirement, with some ensuring that all of their road operatives obtain formal qualifications and the associated “Street Works” cards from the Street Works Qualifications Register (SWQR), which allows them to evidence their competence to roads authority inspectors.

- 6.10. **Question 10** - Should the minimum legal requirement for at least ‘one’ operative to be qualified be increased to ensure that more operatives at each road work site hold formal qualifications for the particular work they are undertaking?

7. Part 4 – Enforcement



Figure 8 - Angus Carmichael Scottish Road Works Commissioner

Part 4(A) – Enforcement by the Scottish Road Works Commissioner

- 7.1. The SRWC has powers to impose financial penalties (currently up to £50,000) on roads authorities which systematically fail in their duty to coordinate, and on utility companies which systematically fail to cooperate when undertaking road works. The practice of successive Commissioners has been to intervene at an early stage with advice by way of a warning which often resolves non-compliance without the need for escalation and fines.
- 7.2. There are occasions where enforcement action may be necessary. Experience has shown that the circumstances in which the SRWC can intervene, is fairly narrowly drawn, and that it may be preferable to provide discretion for the SRWC to intervene in other circumstances where there is non-compliance under NRSWA, either on the part of a utility company, or on the part of a roads authority.
- 7.3. At present the SRWC effectively performs a quasi-judicial role and does not have an inspection function. This means that the SRWC has the ability to come to determination about matters that are reported to him/her, but lacks any fact-finding or power to inspect road works to independently determine what the facts of the matter are. Generally speaking the SRWC reacts to matters that come to his/her attention, and while the SRWC has the power to direct that he/she is to be provided with any relevant information, the Office does not presently have the means to independently ascertain what the relevant facts are. This is perhaps adequate for a regime which looks only at the activity of utility companies, and is reliant on the relevant roads authority to report on the relevant facts, but it is probably not sufficient for any regime which also wishes to

look at the performance of roads authorities in terms of their responsibilities under NRSWA and the RSA¹⁰.

- 7.4. If the scope of the SRWC's role is to be expanded to include a wider locus to intervene, including in respect of roads authority obligations, then it follows that it may be prudent to formally recognise this through the addition of a statutory function to inspect.
- 7.5. Where regulatory bodies have an inspection function, it is normal to provide a common set of inspection powers. Of course, day to day, most inspection functions are carried out on a consensual basis. It is important that the principle of 'fairness' underpins any inspection regime. This includes within the context of any associated judicial proceedings, that any relevant evidence has been fairly and lawfully obtained. On that basis, and to respect the principle of fairness, it is sensible that where an inspection function is conferred on a regulatory body, it is accompanied by an appropriate set of enforcement powers. While these may not be required on every occasion, they provide the necessary authority to back up the inspection process where that is required, and they provide assurance to those being inspected, that the outcome has been fairly and lawfully obtained.

Wider scope for Scottish Road Works Commissioner to intervene

To be delivered by:

- Primary Legislation

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- 7.6. The SRWC's enforcement powers, which are set out in S119A of NRSWA are fairly narrowly drawn and limited to situation where there is:
 - a failure to comply with the duty placed on road works authorities under Section 118 of NRSWA to coordinate road works; and
 - a failure on the part of undertakers to comply with the duty under Section 119 to cooperate with roads authorities.
 - 7.7. It may be beneficial to widen the scope of the Commissioner's remit so that they may intervene where there is a failure under any of the duties under NRSWA, or the RSA. This would be consistent with expanding the functions of the SRWC to include an inspection role, where there would be a means to deal with any non-compliance where appropriate.
 - 7.8. Widening the scope of the circumstances in which the SRWC is able to intervene, would also provide a means for roads authorities to escalate

¹⁰ <http://www.legislation.gov.uk/ukpga/1984/54/contents>

serious problems with non-compliance where they have been unsuccessful in their own attempt to change behaviours and bring the business concerned into compliance. At present, the only means of escalation open to a roads authority is to report relevant non-compliance as a criminal offence to the Crown Office and Procurator Fiscal Service.

- 7.9. We propose that the SRWC should have the power to intervene when either a roads authority or utility company is failing to comply with any of their duties under NRSWA, or RSA, or with standards of compliance which may have been set for them by the SRWC under a relevant Direction.

Scottish Road Works Commissioner power to direct/serve improvement notices with consequences for non-compliance

To be delivered by:

- Primary Legislation
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- 7.10. The SRWC already has specific powers of Direction. Section 119(2A)(a) of NRSWA imposes a duty on a utility company to comply with any Direction given by the SRWC with respect to their duties under sections 119(1) to 119(1B) of NRSWA. These relate to the utility company's duties to cooperate with roads authorities on the planning and coordination of road works.
- 7.11. A Direction given by the SRWC under Section 119(2A) must relate to the utility company's duties under the specified elements of section 119. The drafting of Section 119(A) of NRSWA implies interaction between the SRWC and a specific utility company. However, experience has shown that it is sometimes necessary, or helpful, for the SRWC to give the same Direction to all utility companies at the same time. Although this is eminently sensible and practical, it is not clear that the statutory provisions were written with this scenario in mind, and that it will be helpful if this could be clarified to put the use of such Directions beyond doubt.
- 7.12. We propose that the SRWC should be given general powers of Direction relating to compliance with NRSWA or the RSA. In short this means that the SRWC would be able to direct an individual roads authority or utility company to comply with a certain provision, by a given deadline, and to a certain standard. We believe that the SRWC should be capable of giving such Directions generally, to apply to all roads authorities, or all utility companies, as well as to individual organisations.
- 7.13. In clarifying the SRWC's powers of Direction, we also believe it will be helpful to provide that there ultimately may be consequences arising from non-compliance with a Direction given by the SRWC in the same way that

non-compliance with the original obligation opens the roads authority or utility company up to the possibility of enforcement action.

Scottish Road Works Commissioner power to refer persistent non-compliance to the Scottish Ministers

To be delivered by:

- Primary Legislation
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- 7.14. Where there is non-compliance with business-related regulations it is necessary to consider what might be most effective is bringing a business back into compliance. If it becomes necessary to exercise enforcement options then the compliance monitoring regime has not been able on its own to achieve the desired outcome. Enforcement options generally exist to fulfil two separate criteria. First, they act as a deterrent to sufficiently motivate anyone contemplating non-compliance to think again. Second, they are designed to have a punitive effect which of itself also may deter others from non-compliance.
- 7.15. Both the deterrent and punitive effect of a sanction are designed to bring about a change in behaviour within the business. In the case of road works the degree to which behaviours can be changed through fiscal sanctions alone needs to be considered. Clearly within a business context, fines can have a role to play, particularly perhaps where the imposition of fines might tip the balance in favour of making compliance the more attractive option in terms of cost to the business. Some of the adverse business effects of prosecution, or the imposition of fixed penalties, or SRWC fines will be secondary effects. Most likely these will arise out of the associated reputational damage. For most individuals and businesses, the stigma of a criminal conviction, for example, will outlast the effect of any fine on the company balance sheet.
- 7.16. In considering what additional enforcement options it might be appropriate to provide for the SRWC, we believe that part of the answer to this is to seek to maximise the reputational risk through non-compliance. We believe one way to achieve this is to provide the ability for the SRWC to refer persistent offenders to the Scottish Ministers. There would be considerable reputational risk/damage from any surrounding publicity. Following such a reference to the Scottish Ministers, chief executive officers for either a roads authority or utility company would have to explain to Ministers what they propose to do to bring their operations back into compliance.

Raise Scottish Road Works Commissioner penalty maximum to £100k

To be delivered by:

- Secondary Legislation

7.17. While the SRWC tends to intervene at an early stage in an attempt to avoid serious non-compliance developing there have been occasions when it has been necessary for the SRWC to impose a financial penalty. We are concerned that the current £50,000 limit may not provide the SRWC with sufficient flexibility to deal with very serious or repeat offending and would therefore propose increasing the maximum available penalty to £100,000.

Scottish Road Works Commissioner power to report offences to the Procurator Fiscal

To be delivered by:

- Primary Legislation *and*
- Guidance

7.18. Business regulatory non-compliance under NRSWA, and the RSA is prescribed as a criminal offence. In practice most serious non-compliance is dealt with through a non-court disposal, either by way of a Fixed Penalty Notice (“FPN”) or through an SRWC penalty. We believe that it may be appropriate to retain prosecution through the courts for very serious non-compliance where all other existing options have been exhausted and have not been effective in improving the level of compliance. As we believe prosecution should be used when all other existing avenues have been tried and exhausted, we believe that that a reference to the Procurator Fiscal in such circumstances should be made by the SRWC.

7.19. In order to achieve this, it will be necessary for the SRWC to be recognised by the Crown Office and Procurator Fiscal Service as a specialist non-police reporting agency. It may also be necessary to create a new offence under NRSWA, and the RSA, which only the SRWC can consider for enforcement action. For example, where roads authorities systematically fail in their duty to coordinate, or utility companies systematically fail to cooperate when undertaking road works. In other words the circumstances in which the SRWC can currently impose a SRWC penalty.

Offences reported by the Scottish Road Works Commissioner should be capable of prosecution under solemn as well as summary procedure

To be delivered by:

- Primary Legislation
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- 7.20. The criminal courts in Scotland provide two levels of court within which prosecutions take place. Summary procedure is where the case is heard by a judge (either a sheriff or a Justice of the Peace) sitting on his/her own. Under Summary procedure the judge decides both the guilt or innocence of the accused, and if found guilty, what the appropriate penalty to impose is. Under solemn procedure, the guilt or innocence of an accused is decided upon by a jury, and the sentence where the accused is found guilty, is decided by the presiding judge(s). Solemn procedure carries with it higher jurisdictional sentencing limits e.g. higher maximum fine levels and is intended to deal with the most serious criminal cases.
- 7.21. We believe that under the scenario outlined above at 6.18, where the SRWC has made a reference to the Procurator Fiscal, that it ought to be open to the Fiscal to consider prosecution under either solemn or summary procedure. Prosecution under summary procedure would only provide for maximum fines well below the level already available to the SRWC through the imposition of an SRWC penalty. If prosecution is an option reserved for more serious matters, then it follows that the courts should have access to higher penalties than might otherwise be imposed administratively.

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| 7.22. Question 11 – Do you agree with our policy proposals to revise and improve the enforcement of road works in Scotland by the Scottish Road Works Commissioner? |
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Part 4(B) – Enforcement through Fixed Penalty Notices

- 7.23. Roads Authorities primarily rely on the use of Fixed Penalty Notices (“FPNs”) as a non-court disposal for certain instances of non-compliance.

Provide possibility of Fixed Penalty Notices as a non-court disposal for all instances of non-compliance under the New Roads and Street Works Act 1991

To be delivered by:

- Secondary Legislation
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- 7.24. The present use of FPNs under NRSWA is limited to non-compliance with certain noticing requirements in relation to the Scottish Road Works Register. We believe there is merit in widening the scope of the FPN regime to apply generally to any offence under NRSWA.
- 7.25. The appropriate use of FPNs can help roads authorities deal with non-compliance and help incentivise behaviour change and therefore future levels of compliance. However, we believe that it ought to be possible to initially try to bring operations into compliance without the use of FPNs through setting out what a business is expected to do to comply. We therefore believe that FPNs should only be used after certain steps have been taken. This includes providing a formal written warning setting out what is required through future compliance.
- 7.26. We believe that where roads authorities have tried to change behaviour through the use of warnings, and the application of FPNs, without an acceptable level of improvement in compliance then they should consider the need for escalation and referring the matter to the SRWC. We believe, however, that the use of an FPN should remain an option also open to the SRWC as the appropriate disposal.

Failures in SLG to be an offence capable of generating a Fixed Penalty Notice

To be delivered by:

- Primary Legislation *and*
 - Secondary Legislation
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- 7.27. One of the recommendations made in the “Barton Report” is that failures noted during so called “Category A” inspections should be liable for an FPN.
- 7.28. In discussing this proposal with key stakeholders and the SRWC, we believe that this proposal relates to circumstances where an inspection is carried out when a road works site is live. Experience suggests that most of the failures noted at this stage fall into two broad categories – failures in

the signing, lighting and guarding of the site (“SLG”), or failures in the way the reinstatement is being carried out. We believe the most appropriate way to deal with these categories of non-compliance is for any highlighted defect to be rectified. For reinstatement failures it may be more appropriate to deal with these under any reinstatement guarantee.

- 7.29. Where identified shortcomings have not been addressed and ample time has been allowed for this purpose, then there may be merit in providing for the option of an FPN as a punitive measure and a future deterrent. As set out above, we believe that it would be appropriate for a formal written warning to be issued as a necessary step before an FPN is issued.

Increase the maximum level of Fixed Penalty Notices

To be delivered by:

- Primary Legislation *and*
- Secondary Legislation

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- 7.30. Another of the recommendations made in the “Barton Report” is that the level of FPNs should be increased. The report points out that a number of roads authorities don’t currently issue FPNs as the current level of penalty (£120 reduced to £80 for early payment) does not cover the administrative costs associated with issuing the FPN and processing the associated payment.
- 7.31. In theory an FPN should achieve three broad objectives. First, it provides for a non-court disposal for something prescribed as a criminal offence under the relevant regulatory framework. Second it should provide a deterrent effect and through this encourage compliance and positive behaviour. Third, it should have some punitive effect, and given that we are dealing here with business regulatory compliance, it should not simply be just another cost of doing business.
- 7.32. We believe the level of FPN should be set as a percentage of the maximum statutory fine set out in the relevant legislation. This has the advantage that any future change in the fine set out on statute will have an automatic knock-on effect on the associated level of FPN.
- 7.33. We propose that the level of FPN should be set at 20% of the maximum fine set for the associated criminal offence under statute

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| <p>7.34. Question 12 – Do you agree with our policy proposals to reform the use of Fixed Penalty Notices for the enforcement of road works in Scotland?</p> |
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8. Part 5 - The Scottish Road Works Commissioner – new functions

Inspection function

To be delivered by:

- Primary Legislation
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- 8.1. The SRWC has no current inspection function. The SRWC therefore has no independent means of gathering information other than through matters which are reported to, or raised with him/her, or through the use of existing powers of Direction to require the provision of certain information.
- 8.2. In a regime such as the one outlined above at paragraph 6.2, where the SRWC's functions include a requirement to have regard to both utility and roads authority works in the same way, then there needs to be a process in place which provides a similar means of independently verifying facts in the same way that roads authority inspectors have the opportunity to look at utility road works. Essentially, the SRWC needs to be able to look at road works activity across the whole of the road works community.
- 8.3. Any inspection power conferred on the SRWC would not be a substitute for roads authority inspection of utility road works activity. This would be complementary activity designed to help raise quality standards, perhaps for example through random or sample based inspections.



Figure 9 – A vehicle belonging to the Scottish Road Works Commissioner

Ability to appoint inspectors

To be delivered by:

- Primary Legislation
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- 8.4. The SRWC is an individual appointment made by the Scottish Ministers. The SRWC becomes the holder of that Office, and so it follows that any functions and powers conferred on the Office holder do not automatically pass to anyone employed by the SRWC. It is simply not feasible for the SRWC to perform every task, and this would also be true of any inspection function.
- 8.5. We believe it will therefore be necessary to confer a specific power on the SRWC which allows the appointment of inspectors to assist the SRWC with inspection activity.
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Necessary powers to support the inspection function

To be delivered by:

- Primary Legislation
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- 8.6. A standard approach in the regulatory arena where an inspection role is defined for an office holder is to provide them with a standard suite of inspection powers. This ensures that they are lawfully entitled to be at a place of business such as a road works site, and that they have the necessary powers to cover other inspection activity such as for example:
- Asking questions of those present;
 - Inspecting documents and requiring documents be produced to them;
 - Making such tests as may be required, etc.
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The juristic status of the Scottish Road Works Commissioner

To be delivered by:

- Primary Legislation
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- 8.7. Previous SRWC office holders raised concerns about the juristic status of their appointment. In particular there were understandable concerns as an individual Office holder, about the extent, if any, to which they might be personally liable for any contractual arrangements they entered into.
- 8.8. Persons are appointed by Ministers to become the individual Office holder. The SRWC role has legal personality rather than it being a natural person. It follows that any contractual arrangements which are entered into while in Office are on the basis of being the Commissioner and that there is not an individual or heritable liability for those contractual arrangements. Given that there has been some doubt expressed in the past, we propose to clarify the legal personality of the SRWC role and put the matter beyond doubt.

Protection of the Scottish Road Works Commissioner and appointed inspectors

To be delivered by:

- Primary Legislation

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- 8.9. Where inspection powers are bestowed on a regulatory function, it is normal practice to provide a form of statutory indemnity from civil proceedings and criminal prosecution. This is necessary as some of the activity (were it not for the fact that the individuals were exercising statutory powers) may give rise to circumstances where they may be committing an offence or could otherwise be open to some form of litigation for their actions.
- 8.10. In order to benefit from the protection afforded under statute a number of tests need to be satisfied. The actions taken need to be in exercise of one or more of the inspection powers available to the individual. The powers need to be exercised with reasonable skill and care, and the action taken needs to be done in good faith. The existence of statutory protection does not stop proceedings being taken against individuals, but it does provide protection which they can claim in their defence provided that they satisfy the courts on the points set out with respect to their powers, that due skill and care were taken and that they acted in good faith.

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| <p>8.11. Question 13 – Do you agree with our policy proposals to enhance the role of the Scottish Road Works Commissioner?</p> |
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9. Part 6 - Miscellaneous provisions

- 9.1. This section covers a variety of issues which have been raised by the road works community and those who have an interest in road works legislation in Scotland. Many of these issues have been raised by Roads Authorities, Utility Companies and the SRWC through their experience of working together on the coordination and planning of roadworks in Scotland.

Restriction following substantial works

To be delivered by:

- Primary Legislation

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- 9.2. The road works community would like to be able to prescribe both the length of restrictions following substantial works and what constitutes “substantial works”. These provisions are used to protect a roads authority’s investment in the full resurfacing of the carriageway. It also encourages coordination with utility companies to ensure they carry out any planned maintenance of their plant before any full reinstatement takes place.
- 9.3. The Transport (Scotland) Act 2005 amended Section 117 of NRSWA. That amendment may not go far enough. Particularly given the desire on the part of roads authorities and utility companies to have a more flexible approach to the setting of the restricted period other than making amendments in primary legislation. A more sensible approach, therefore, is to have the ability to prescribe the restricted period through secondary legislation.
- 9.4. We propose to introduce the ability to prescribe the restricted period following substantial works in secondary legislation.

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| 9.5. Question 14 - Should there be flexibility to prescribe the restricted period following substantial works through secondary legislation? |
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Require notice to be given by utility companies to the relevant roads authority

To be delivered by:

- Primary Legislation
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- 9.6. Experience suggests that an unintended consequence of an amendment made to Section 114 of NRSWA (Notice of starting date of the works), by the Transport (Scotland) Act 2005, is that it omits the roads authority from interested parties that a utility company must give notice to of planned works. The provision is designed to ensure that notice is given to any other person having apparatus in the road which is likely to be affected by the planned road works. Section 114 (3A) of NRSWA does not include the roads authority as a notifiable body. In practice, relevant codes of practice ensure there is good coordination between utility companies and roads authorities. However it would be good to bring the statutory provisions in line with actual practice and industry requirements.
- 9.7. The current situation also has implications on other issues (discussed at 8.10 below).
- 9.8. We therefore propose to make it clear that the relevant roads authority is included within the obligation set out in Section 114 of NRSWA

9.9. Question 15 - Should we clarify that a roads authority is included within those to be notified under Section 114 of NRSWA?
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Early Starts

- 9.10. The code of practice for the Coordination of Works in Roads sets out a RAUC(S) agreed process for Early and Late start Consents. However based on the information presented in the previous section, as there is no obligation on the utility company to inform the roads authority of their works, it would be impossible for the roads authority to give consent. The use of early and late start consents allow both the roads authorities and utility companies to deliver on their obligations to coordinate and cooperate as set out in Sections 118 and 119 of NRSWA.
- 9.11. RAUC(S) have provided guidance in order that the road works community works together. Guidance normally takes the form of an Advice Note and these are normally developed by a working group. The working groups consist of representatives from utility companies and roads authorities. There is a specific Advice Note to assist with this matter. However this issue is rooted in that set out above, in connection with a lacuna in Section 114 of NRSWA.

- 9.13. In order to ensure there is no ambiguity around this matter it is proposed to amend Section 114 of NRSWA to ensure that the roads authority is informed by statute as noted in section 8.8 above.

9.14. **Question 16** - Should roads authorities be one of the parties that must be notified under statute to help formalise the use of early and late start consents?

Revocation of Section 132 of NRSWA

To be delivered by:

- Primary Legislation

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- 9.15. Section 132 of NRSWA makes provision for utility reinstatements which are affected by subsequent works, including where the roads authority has had to make remedial repairs in the absence of the utility company concerned repairing a defective reinstatement. A working group of RAUC(S) concluded that the provisions of Section 132 are unworkable and this has led for calls for the provision to be repealed.
- 9.16. We propose that the issues contained within Section 132 should be considered alongside the introduction of mandatory quality plans (described above). We propose that Section 132 of NRSWA should be repealed.

9.17. **Question 17** - Should Section 132 of NRSWA be repealed?

Ensure parity between roads authority and utility noticing requirements to the SRWR

To be delivered by:

- Primary Legislation

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- 9.18. A review of the noticing requirements of roads authorities and utilities has shown that there is some disparity between the obligations of each, with utility companies being required to make significantly more compulsory entries in notices placed on the SRWR than roads authorities. Additionally, there are also differences in timescales given for notices of the same type.
- 9.19. It is desirable to have parity across all those undertaking works in roads. Improved noticing and timing of noticing should facilitate better

cooperation and coordination in line with the respective duties of roads authorities and utility companies under Sections 118 and 119 of NRSWA.

- 9.20. We propose that the noticing requirements for roads authorities and utility works should be adjusted so they are the same.

9.21. **Question 18** - Should noticing requirements for roads authorities and utility companies be exactly the same in order to facilitate coordination and cooperation?

Revoke Section 61 of the Roads (Scotland Act) 1984

To be delivered by:

- Primary Legislation

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- 9.22. Currently, in order to place a notice on the SRWR, a condition of working in the road in Scotland, the organisation carrying out the work must be either a roads authority or a utility company, or undertaking work on behalf of one of these parties. On occasion, parties such as private householders or developers may wish to undertake works, for example to make a utility connection or to provide a dropped kerb access.
- 9.23. There is provision within Scottish roads legislation to permit such organisations or individuals to undertake works by means of an agreement made under Section 109 of NRSWA, or an agreement made under Section 61 of the RSA. However there are significant differences between these two permissions, with a Section 61 agreement generally held to be less onerous of the two.
- 9.24. There are differing approaches taken across the 33 roads authorities that can be confusing for organisations wishing to work across boundaries within Scotland. Section 61 is generally regarded as the less onerous route as it carries no obligation to place notices on the SRWR.
- 9.25. The industry has its own guidance on the use of relevant permits (RAUC(S) Advice Note 22, “The Use of Section 109 of the New Roads and Street Works Act 1991, Replacing Section 61 of the Roads (Scotland) Act 1984”) which was published in 2013. The Advice Note provides guidance on the use of Section 109, outlines the advantages and recommends that a Section 109 permission is used as the standard approach to be taken by Scottish roads authorities.
- 9.26. The use of a Section 109 permission is highly desirable as the standard approach to be taken. It is therefore proposed to repeal section 61 of the RSA although allowing existing agreements to stand. This proposal would

mean that agreements going forward would have to be made under Section 109 of NRSWA.

- 9.27. We therefore propose the revocation of Section 61 of the RSA, with savings provisions made for existing agreements.

- 9.28. **Question 19** - Should Section 61 of the Roads (Scotland) Act 1984 be revoked with savings provisions for existing agreements?

Transport Scotland – Policy
On behalf of the Scottish Ministers
July 2017

Annex A

Consultation Responses

Respondent Information Form

Please Note this form must be returned with your response.

Are you responding as an individual or an organisation?

- ☐ Individual
☐ Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:-

- ☐ Publish response with name
☐ Publish response only (anonymous)
☐ Do not publish response

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- ☐ Yes
☐ No

Consultation Questions

The consultation questions are listed below. Respondents are asked to give an answer to the questions put on our policy proposals, this is typically to say whether you agree with them or not, and to explain that answer in a comment. There is a separate section at the end which looks at likely impacts.

Question 1 - Should utility companies be required to produce quality plans for proposed road works?

Please answer Yes ☐, or No ☐.

Please explain your answer to this question:-

Question 2 - Should there be a single guarantee period offered on utility reinstatements of 6 years regardless of the depth of excavation?

Please answer Yes ☐, or No ☐.

Please explain your answer to this question:-

Question 3 - If introduced, should the impact of quality plans be reviewed after a suitable period (perhaps 6 years), and the necessity of the latent defect process be assessed?

Please answer Yes ☐, or No ☐.

Please explain your answer to this question:-

Question 4 - Should we clarify the scope for a code of practice on reinstatement (currently the SROR) includes all activity relating to the execution of road works eg signing lighting guarding, excavation, reinstatement, and guarantee period?

Please answer Yes ☐, or No ☐.

Please explain your answer to this question:-

Question 5 (a) - Should start actual starts, works completed, works cleared, and works closed notices be notified within 2 hours, or within 2 hours of the start of the next business day if outwith office hours?

Please answer Yes ☐, No ☐.

Please explain your answer to this question:-

Question 5 (b) – Should the validity period for notices placed onto the SRWR in relation to planned works be reduced, the proposal being that they be set at 4 days or 2 days depending on the traffic sensitivity of the road?

Please answer Yes ☐, or No ☐.

Please explain your answer to this question:-

Question 6 - Should the provision of plant information to the Scottish Road Works Register should be made mandatory?

Please answer Yes ☐, or No ☐.

Please explain your answer to this question:-

Question 7(a) – Should the obligation on the Scottish Road Works Commissioner to make the Scottish Road Works Register available for inspection be repealed?

Please answer Yes ☐, or No ☐.

Please explain your answer to this question:-

Question 7(b) – Should the duty to make the Scottish Road Works Register available for inspection be replaced with a duty on the Scottish Road Works Commissioner to actively publish information relating to the location of planned and actual road works?

Please answer Yes ☐, or No ☐.

Please explain your answer to this question:-

Question 8 - Should “the Safety at Street Works and Road Works A Code of Practice” apply equally to roads authority and utility road work sites?

Please answer Yes ☐, or No ☐.

Please explain your answer to this question:-

Question 9 - Should utility and roads authority workers be required to be qualified in the “Signing Lighting and Guarding” of a site, and also in the “Location and Avoidance of Underground Apparatus”?

Please answer Yes ☐, No ☐.

Please explain your answer to this question:-

Question 10 - Should the minimum legal requirement for at least ‘one’ operative to be qualified be increased to ensure that more operatives at each road work site hold formal qualifications for the particular work they are undertaking?

Please answer Yes ☐, or No ☐.

Please explain your answer to this question:-

Question 11 – Do you agree with our policy proposals to revise and improve the enforcement of road works in Scotland by the Scottish Road Works Commissioner?

Please answer Yes ☐, No ☐.

Please explain your answer to this question:-

Question 12 – Do you agree with our policy proposals to reform the use of Fixed Penalty Notices for the enforcement of road works in Scotland?

Please answer Yes ☐, No ☐.

Please explain your answer to this question:-

Question 13 – Do you agree with our policy proposals to enhance the role of the Scottish Road Works Commissioner?

Please answer Yes ☐, No ☐.

Please explain your answer to this question:-

Question 14 - Should there be flexibility to prescribe the restricted period following substantial works through secondary legislation?

Please answer Yes ☐, or No ☐.

Please explain your answer to this question:-

Question 15 - Should we clarify that a roads authority is included within those to be notified under Section 114 of NRSWA?

Please answer Yes ☐, or No ☐.

Please explain your answer to this question:-

Question 16 - Should roads authorities be one of the parties that must be notified under statute to help formalise the use of early and late start consents?

Please answer Yes ☐, or No ☐.

Please explain your answer to this question:-

Question 17 - Should Section 132 of NRSWA should be repealed?

Please answer Yes ☐, or No ☐.

Please explain your answer to this question:-

Question 18 - Should noticing requirements for roads authorities and utility companies be exactly the same in order to facilitate coordination and cooperation?

Please answer Yes ☐, or No ☐.

Please explain your answer to this question:-

Question 19 - Should Section 61 of the Roads (Scotland) Act 1984 be revoked with savings provisions for existing agreements?

Please answer Yes ☐, or No ☐.

Please explain your answer to this question:-

Impacts

Equality

In creating a consistent approach to managing road works in Scotland the public sector equality duty requires the Scottish Government to pay due regard to the need to:

- eliminate discrimination, victimisation, harassment or other unlawful conduct that is prohibited under the Equality Act 2010;
- advance equality opportunity between people who share a protected characteristic and those who do not; and
- foster good relations between people who share a relevant protected characteristic.

These three requirements apply across the 'protected characteristics' of:

- age;
- disability;
- gender reassignment;

- marriage and civil partnership;
- pregnancy and maternity;
- race;
- religion and belief; and
- sex and sexual orientation.

Once completed the Scottish Government intends to determine, using the consultation process, any actions needed to meet its statutory obligations. Your comments received will be used to complete a full Equality Impact Assessment to determine if any further work in this area is needed.

Business and Regulation

In our work to the regulation of Road Works a Business and Regulatory Impact Assessment will analyse whether the policy is likely to increase or reduce the costs and burdens placed on businesses, the public sector and voluntary and community organisations.

Question 20 - Are there any likely impacts the proposals contained within this consultation may have on particular groups of people, with reference to the 'protected characteristics' listed above? Please be as specific as possible

Question 21 - Do you think the proposals contained within this consultation may have any additional implications on the safety of children and young people?

If yes, what would these implications be? Please be as specific as possible.

Question 22 - Do you think the proposals contained in this consultation are likely to increase or reduce the costs and burdens placed on any sector?

Please be as specific as possible.

Privacy

We need to ascertain whether our proposals on road works regulation may have an impact on the privacy of individuals.

Question 23 - Are there any likely impacts the proposals contained in this consultation may have upon the privacy of individuals?

Please be as specific as possible.

Environmental

The Environmental Assessment (Scotland) Act 2005 ensures those public plans that are likely to have a significant impact on the environment are assessed and measures to prevent or reduce adverse effects are sought, where possible, prior to implementation.

Question 24 - Are there any likely impacts the proposals contained in this consultation may have upon the environment?



**TRANSPORT
SCOTLAND**

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