

## IMPROVING THE QUALITY OF ROAD WORKS – A CONSULTATION

### **Response by Chartered Institution of Highways & Transportation, Scottish Policy Forum**

The Chartered Institution of Highways and Transportation (“**CIHT**”) is a membership organisation representing over 14,000 people who work in the highways and transportation sector. CIHT members plan, design, build, operate and maintain best-in-class transport systems and infrastructure, whilst respecting the imperatives improving safety, ensuring economic competitiveness and minimising environmental impact.

CIHT Scotland embraces both public and private sectors across the whole geography of the nation and welcomes the opportunity to comment on this consultation which seeks views on proposals for improvements to the regulation of road works in Scotland which includes taking forward the recommendations of the Barton Report. In general CIHT supports measures that move us towards a better regime of reinstatements, a safer working environment and better information for road users and the travelling public. We offer our comments on each of the questions below.

### **CONSULTATION QUESTIONS**

#### **1. Should utility companies be required to produce quality plans for proposed road works?**

Yes. The introduction of quality plans should not only focus the mind at the outset and give roads authorities the opportunity to comment/modify in advance of the works, but should also provide a benchmark against which any subsequent action can be measured and justified. Apart from encouraging improved pre-planning of works, with an appropriate review mechanism there should be the possibility of deriving (and sharing) key “lessons learned”.

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

Yes. Keeping it simple and consistent will remove scope for doubt and uncertainty.

#### **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?**

Yes. It is important that there should be a review after 6 years. By then the 6-year guarantee period should be well established and its efficacy be able to be assessed before any decision is made on the latent defect position.

**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, e.g. signing, lighting, guarding, excavation, reinstatement, and guarantee period?**

Yes. There is ample, daily evidence of the need for safer and better practices so a code of practice is essential. Recurring problems such as deficient edge formation and surface over-break need to be remedied. Also, impact on ALL road users needs better pre-planning: pedestrians, bus passengers and mobility-impaired people are often not properly catered for and it is apparent that temporary traffic signals are often installed without reference to prevailing traffic flows (and tidality) or consultation with roads authorities. More generally, we feel it should be noted that failure to comply with the Safety at Street Works and Road Works Code of Practice is a criminal offence elsewhere in the UK. We have difficulty identifying any good reason why it should not be so in Scotland?

**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?**

Yes. The major users of the road network, e.g. bus companies and logistics companies need up to date information. Reducing the notification period as described is still not perfect but is a significant step in the right direction. It is also the case that disability groups, e.g. representing the blind or those with a mobility handicap, would welcome more accurate information on the works taking place on the network so they can warn their members.

**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?**

Yes. See response to Q5(a) above.

**6. Should the provision of plant information to the Scottish Road Works Register be made mandatory?**

Yes. In the best interests of workers safety and protection of plant it should be mandatory to have a central register of plant in the road. There should, however, be a sifting process for access to this detailed information to ensure the security of plans against deliberate damage.

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

Yes. In these times of terrorist threats and activity, there should be a confidentiality afforded to the detailed information on plant in the road. In general, the public is not interested in what exactly is the cause of the roadworks and exactly what plant is being worked on in advance of the works. Their main interest is how the works will affect their own mobility and reliability of their journey time.

**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?**

Yes. This is the necessary corollary to the answer to Q7a. One of the main deterrents for the public to find out about roadworks is that the SRWR is a technical tool designed for use by the industry, not the general public. A member of the public would not necessarily know how to go about accessing the SRWR. Consequently, there should be a requirement to publish the essential information on roadworks that the public needs to know about in a simple, easily accessible manner. However, one other benefit is the information does become available to other utilities and (adjacent) road authorities.

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

Yes. What is “good for the goose is good for the gander” and can bring benefits of consistency to the works regardless of the propagator.

**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”?**

Yes. There is merit in this suggestion. The minimum standard of having only one qualified operative on a site runs the risk of temporary absence leaving the site not properly supervised. It is a matter for further consideration of how many qualified operatives should be present on a site. Ideally all should be qualified but that may place a burden on the works that removes the flexibility to make short-term decisions on manpower and manpower changes to meet the various stages of the work. Perhaps a **minimum of two** qualified operatives would ensure there was a strong likelihood of ensuring cover at all times.

**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?**

Yes. See response to Q9 above.

**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?**

Yes, in principle, but we have two areas of comment:

Firstly, while these proposals seem sensible, especially the increase in the level of fines to a level that becomes a real deterrent, it has to be recognised that with the continuing cuts to local authority budgets the requirement for effective coordination of roadworks becomes more onerous. If the powers of the SRWC are extended to include possible fines on local authorities for non-coordination it has to be recognised that this will have budget implications and the Scottish Government will have to make appropriate provision in the local government settlement. In addition, any enforcement action taken against a roads authority relating to the quality of a reinstatement should only apply where there is a perceived danger to the public. In the event that a roads authority has carried out a reinstatement which for example has a life of only 2 or 3 years rather than the six-year guarantee period, then the cost of correction will rest with the roads authority which may decide to correct the defect after the limited life of the defective reinstatement has lapsed

rather than dig it up and correct at once. This will be a value judgement for the roads authority and should not be subject to enforcement by a third party.

Secondly, there are two areas in which we believe we could further strengthen the enforcement of quality road works. See our response to Q4 where we refer to the criminality status of non-compliance with the Code of Practice elsewhere in UK. Also, we believe that we could be missing an opportunity for which evidence is emerging as a beneficial method of encouraging better quality of road works. We are referring to the potential for lane rental or permit schemes, as permitted in England by, respectively NRSWA secondary legislation and the TMA 2004 (which does not apply in Scotland). Napier University has carried out research on the impact of these measures in England and have found that they are self-financing and have cut the number of days that utility companies occupy the roads, and particularly the most sensitive roads, and therefore congestion. We would like to suggest that legislation should allow any local authorities interested in such schemes in Scotland to pilot them experimentally within a fixed timescale (say 5 years from the Bill becoming law) and then the results of any such experimental schemes being used to decide whether the enabling powers be made permanent (this can all be done via statutory instrument).

You may also be aware that DfT is currently consulting on the future of lane rental schemes (see <https://www.gov.uk/government/consultations/future-of-lane-rental-schemes-for-roadworks>).

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

Yes, subject to comments in Q11 response above.

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

Yes.

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

Yes. We believe so provided the flexibility on timescales rests with the roads authority and is not prescribed in the secondary legislation.

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

Yes.

**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?**

Yes.

**17. Should Section 132 of NRSWA be repealed?**

Yes, provided the proposals for quality plans adequately cover the issue.

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

Yes. There may be a subtle point to be made here that strategically, the utilities and roads authorities are in the same sector of providing transport (“the movement of things”) whether it be people, passengers, freight, energy, water, waste, data, chemicals – all contributing to the economy of the nation. So, consistency seems right.

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

No comment.

**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.**

Since as noted in our answer to Question 4, there are clearly many temporary roadworks sites that do not cater adequately or safely for pedestrians, and since disabled people’s and older people’s dependency on walking for their mobility is above the average for the population as a whole, then any failure in the proposals to properly address these issues will amount to indirect discrimination against these groups. In addition, the Equality Act 2010 places a duty on all service providers, including statutory undertakers and roads authorities, to make reasonable adjustments to their services so that they can be used equally by those people with protected characteristics and those without. Guidance from the SRWC should be updated to reflect this legal duty.

**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.**

No, provided proper provision is made for proper and safe guarding of works and diverted pedestrian routes cater for the full range of users.

**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.**

Possibly increased costs for some utilities although better planning often brings more efficient working methods. However, it is worth noting from Napier University’s research that where permit schemes and lane rental were introduced in England, there were additional costs for some utilities but those financial costs were less than the monetised value of time saved by travellers who suffered fewer delays.

**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.**

Not probable.

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

Only positive ones resulting from improved reinstatements and less delays (noise, pollution) at road works properly controlled by planned, suitable signal timings.