

## **NJUG response to Scottish Government consultation: Raising Standards and Improving the Quality of Road Works in Scotland**

### **Introduction**

As the UK's only trade association representing utilities and their contractors on street works issues, we promote best practice, self-regulation and a two-way relationship with government and other relevant stakeholders.

The National Joint Utilities Group (NJUG) is also the utility arm of the Highway Authorities and Utilities Committee (HAUC(UK)), working collaboratively with roads/local authorities and national and regional governments to drive up standards of road and street works in Scotland, England, Northern Ireland and Wales. This response is specifically the views of NJUG members, not representing HAUC.

NJUG welcomes this consultation and the opportunity to feed into the Scottish Government's policymaking process on road works. NJUG has appreciated the opportunity to contribute to the development of this consultation through the Scottish Government's Roads Policy Development Group.

The government's proposals contain a number of positive measures to improve the quality of road works which NJUG welcomes, including the introduction of quality plans and the focus on greater consistency between utilities and roads authorities.

There are a number of proposals which NJUG broadly supports in principle but where consistency, proportionality and balance are critical to ensure their implementation is successful. NJUG is keen to continue working with ministers and officials on the detailed implementation of these proposals to ensure that they work as effectively as possible.

NJUG would note that a number of these proposals are highly interconnected, and it would be appropriate for detailed consideration to be given to the implications of specific proposals on other measures set out in this package to ensure that they work effectively as a whole.

### ***Part 1 – Improving quality***

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

NJUG supports in principle the mandatory requirement for utility companies to produce quality plans, and welcomes the move to an assurance approach.

NJUG agrees that the current regime places too much emphasis on inspection and technical compliance. NJUG supports an approach where utilities can take the lead to proactively demonstrate compliance.

In this spirit, NJUG would like to see performance plans replace elements of the current policy regime, rather than be an addition. This must, over time, result in an ability to reduce the level of inspections. Consideration also needs to be given to whether a national coring programme is necessary with quality plans in place. Coring should be reserved for where it is clear that a quality plan has not been met.



It is particularly positive that RAUC(S) has been given a key role in proposing what a quality plan could look like. The exact format and detail of the quality plans, and how these are considered and used by roads authorities, is crucial. NJUG members – through RAUC(S) – remain committed to being involved in the development of this.

The quality plan must be robust, transparent, and provide sufficient detail to be worthwhile, but it is important that it does not become overly complex or burdensome on utilities. A proportionate approach has significant benefits for all parties.

NJUG would like clarity on the process for these plans, particularly in relation to any approval or sign off process. There needs to be greater clarity on where they 'sit'.

It is critical that road quality plans are consistently applied in all roads authorities. This should also involve a mandatory requirement on all Roads Authorities to also complete quality plans to ensure consistency and promote the highest levels of quality across the board.

NJUG would note that performance data suggests that on balance the quality of reinstatements carried out by utilities in Scotland are at a significantly higher standard than those carried out by roads authorities. Many reinstatements undertaken by utilities are made onto roads of a significantly poorer quality than the reinstatement itself. It is necessary for the quality plans to reflect this.

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

NJUG strongly believes that the current guarantee period of two to three years is sufficient. Any guarantee period must be both practical and proportionate.

Evidence indicates that when reinstatements fail, this will happen within a two to three year time period. There is not currently sufficient evidence to support a six year guarantee period.

NJUG would recommend that the Scottish Government undertakes further work to evidence the need for a six year guarantee period. As the SROR was last updated in January 2015, time should be given to understand the impact of these changes, and to understand whether changes to guarantee periods are appropriate or necessary.

If a six year guarantee period is in place, the SROR should become a performance specification, rather than strict guidelines. This will allow for innovation by encouraging flexibility on materials as long as they conform to this guarantee period.

If such a guarantee period is introduced for utilities, this should also apply to roads authorities. The road is a public asset, of which roads authorities are the current custodians. Therefore it is reasonable that they should also be accountable for the quality of their works.

It is critical that if a six year guarantee period is introduced, the existing condition of the road surrounding the reinstatement is taken into account. Utilities often find that the surrounding road is often not fit for purpose.

In addition, some surface products such as skid resistance and line markings are not designed for six years. These would need to be removed from the definition to make such a guarantee period workable.

**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?**

NJUG would strongly support this proposal. An interim review of quality plans may also be appropriate to ensure that any new systems and processes are working effectively. Where the process is not working as expected then changes should be made, in consultation with industry.

NJUG would like to see the latent defect process removed if a guarantee period is introduced.

**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?**

NJUG supports the proposal to clarify the scope for a code of practice on reinstatement, but would not support signing, lighting and guarding being part of this. The SROR is not the right place for this.

There should be consideration given as to which aspects of this code of practice should apply consistently to both roads authorities and utilities.

Consideration should also be given to how such a clearly defined and prescriptive code of practice works alongside a performance based system such as road quality plans. Greater clarity is required on how these sit alongside each other.

If a utility or contractor can demonstrate in the quality plan that they have followed the correct process, and that the outcome has performed to a satisfactory standard, then the code of practice could become a set of guidelines rather than a prescriptive of code of practice. This would encourage innovation in materials and processes. This would particularly become the case if a six year guarantee period was introduced to protect against poor quality reinstatements.

It should be clear that any future changes to the code of practice by ministers should follow a full consultation period and be done in close liaison with utilities and road authorities.

***Part 2 - Improving the availability of road work information***

**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 out with office hours?**

NJUG supports the principle of providing as up to date traffic information to road users as possible. Utilities are committed to minimising disruption and inconvenience where possible. Utilities are also committed to supporting the use of technology as much as possible to improve the delivery of world class street works.

Therefore, while NJUG supports this proposal in principle, there are a number of factors that need to be taken into consideration for it to be most effective, and it is important that this is introduced in a proportionate and managed way.

In many rural areas, the technology is not sufficiently supported due to connectivity/signal concerns to allow real time remote working. Similarly, it is important that the back office technology/software is proven to support this way of working.

In many rural areas, utilities often use smaller, local contractors. These contractors may not have the technology or systems to comply with this proposal. NJUG would suggest that one solution could be the development of an app for smaller contractors to support them in meeting these requirements.

Many works are completed and the road put back to normal use, but with equipment left on site and collected by a separate team the following day. There is merit in considering the introduction of an additional category of "Roads open" which would notify the register that the road is back to normal, but that minor elements of the works need to be completed before "Works Clear" or "Works Closed" can be notified.

Proof of concept and sufficient testing is therefore required before this is taken forward at scale and made mandatory. A pilot and a phased rollout in close liaison with utilities and their contractors would be the most appropriate way forward. Utilities will need sufficient time to adapt their systems and ensure compliance before this comes into full effect. There needs to be a clear review point in place.

**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?**

NJUG would strongly oppose this recommendation. Utilities are committed to avoiding early/late starts but there are too many moving factors to make this proposal feasible. This would add no value to the process and simply become an administrative burden on utilities. It is very difficult to predict programmes of work three months in advance, and having to place these into such a limited time period would likely see a significant number of early/late start requests. This would undermine the value of the information available for road users. On this issue it is essential that there is a consistent approach between Scotland and elsewhere in the UK.

It would be more effective to place resources into co-ordinating potential works over a longer term time period, such as two to three years, particularly on non-traffic sensitive roads in largely residential areas. This would provide an opportunity for utilities and roads authorities to understand how these intended, rather than planned works, could be co-ordinated and de-conflicted to minimise road user disruption. A longer time period, rather than planning within a four day period three months in advance, will allow utilities to co-ordinate within the cycles set by their respective regulators.

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

NJUG supports this proposal in principle. Greater access to information is positive. However it is important that there are sufficient exemptions for sensitive information, i.e. relating to military establishments, government buildings, hospitals etc. This information should not be able accessible to the public.

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



NJUG strongly supports this proposal. From a road user perspective the register itself is of little value. What is most useful is how this is displayed and presented to show where roadworks are taking place and who is responsible.

**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?**

NJUG supports this proposal in principle. This measure is likely to improve the quality and timeliness of up to date information available to road users, and consequently reduce disruption.

NJUG would recommend that this duty is introduced under the guidance of the SRWR steering group. NJUG would note that there may be competition law concerns relating to contractors which need to be properly assessed. The information disclosed should note only who worked there and when rather than giving any information on the works undertaken.

### ***Part 3 - Improving consistency***

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

NJUG fully supports this proposal which provides consistency across the roads community. The safety of roads authority works must be just as important as the safety of utilities works. There are questions as to how this would be audited and monitored. This proposal should also apply to third parties working in the road under Section 109, such as developers.

**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”?**

NJUG supports requiring all workers to have basic competence in the “Signing, Lighting and Guarding” of a site. However, it is not appropriate for all workers to be qualified in this. It is important that this proposal is introduced in a way that does not exacerbate the skills and resourcing issues facing the sector, or restrict apprentices, for example.

To overcome this challenge but recognising that working in the road can be a hazardous environment, NJUG would like to see consideration given to a basic road safety qualification which can be undertaken by apprentices and trainees relatively quickly. The responsible team leader would be fully trained.

This proposal would not compromise on safety, but would allow these individuals to gain experience and skills as they work towards being fully trained.

We would note that it may not be appropriate for all operatives on a site to be qualified in “Location and Avoidance of Underground Apparatus”, and would propose that this should only apply to those excavating or digging on a site. This would not be appropriate for more specialist visitors to a site who are not undertaking this work. This measure needs to be flexible according to the work taking place.

**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?**

NJUG would suggest that the current requirements are sufficient. However, every operative working on site must be capable of working safely.

With the long term trend towards greater automation/robotics the number of operatives working on a site is likely to reduce significantly in time. One formally qualified operative is likely to be sufficient. NJUG would note that is possible for all those working on a site to have basic safety training, without being formally qualified to such a high standard.

***Part 4 – Enforcement***

**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?**

NJUG has supported the role and powers of the SRWC since its introduction. While NJUG supports the greater accountability that this change proposes, it questions the need for this change. There is not sufficient evidence that these additional powers are necessary.

NJUG would suggest that the focus of the role should remain on early intervention, encouraging collaboration and better understanding, and promoting the use of evidence. Greater clarity is required as to where powers lie between the commissioner and RAs, in order to minimise confusion or duplication of responsibilities.

It should be noted that the mandatory introduction of Road Quality Plans should minimise the need for intervention by RAs or the commissioner.

If these proposals are introduced it is important that this is done proportionately, so as not to damage long term confidence in and support for the role. It should be clearly acknowledged that these changes would equate to a significant expansion in the scope and powers of the commissioner. The office should be resourced appropriately to reflect this, but there also need to be sufficient checks and balances in place.

It is critical that if this proposal is introduced, it applies to both roads authorities and utilities. Paragraph 6.8 sets out powers for Roads Authorities to raise concerns to the commissioner. It is imperative that these powers should apply each way, with utilities able to raise concerns regarding RAs to the commissioner. Parity of escalation must exist.

**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?**

NJUG does not agree with the proposals to increase charges for Fixed Penalty Notices (FPNs). FPNs are an administrative cost. NJUG would argue that roads authorities should be able to administer this process within the current £80 charge. If this is not possible, then any increase should be reasonable rather than tenfold. It is important that authorities drive maximum efficiencies to minimise costs for consumers.



NJUG would welcome clarity on who receives any revenue. There is a danger, supported by previous policy changes, that this becomes considered as a revenue stream and drives the wrong behaviour. Consideration should be given as to how this could be mitigated against.

There needs to be mechanisms in place to ensure that this change is used proportionately. While safety breaches are clearly understandable, there is danger that these powers are used inappropriately, i.e. if a cone is placed in the wrong place by a meter, or if works start very marginally late. NJUG would stress that a strong system of recourse is essential.

If this measure is to be taken forwards, it is critical that the proposal to issue a written warning and an opportunity to improve compliance before further action is taken remains as set out. This allows utilities the opportunity to address issues and improve them. However, some failures such as admin errors may be more difficult, or impossible, to correct. Greater clarity is required as to how this improvement process would operate in these cases to allow the error to be rectified and an FPN to be avoided.

NJUG would argue that the introduction of quality plans should minimise the need to use FPNs. NJUG would recommend a trial period to measure the effectiveness of the new quality plans regime, before reforms to FPNs are introduced.

There are questions as to whether Roads Authorities and utilities could cope with the level of changes proposed being introduced at once. It is important that they are introduced in a sensible and phased way that reflects how both RAs and utilities operate, and recognises the interconnected nature of these changes.

#### ***Part 5 - The Scottish Road Works Commissioner – new functions***

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

NJUG agrees in principle with these changes. Protecting the independence and status of the SRWC is fully supported.

The implementation of these changes is important, and it must be done proportionately and with consideration to the increased costs. NJUG would like clarity on the likely scale of these costs and information on how these would be recovered.

These changes should be considered in the round, with the overall impact of the changes taken in to account. The impact of these changes on the overall inspection burden need to be recognised.

It is important that this is introduced in a consistent way for both utilities and RAs, and works both ways. Independence and balance are key, and NJUG welcomes the opportunity for external independent verification that this could provide. NJUG would like to see greater clarity on the standards used in these inspections, and would recommend that there is a process for ensuring the training and quality of inspectors, and sufficient auditing of their inspections. There needs to be a facility for dealing with disputes.

There may be cases where it is not appropriate for an inspection to take place on safety grounds. Utilities and their contractors should retain the ability to refuse an inspection as the ultimate body responsible for the site.

***Part 6 - Miscellaneous provisions***

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

NJUG is not opposed to this change in principle, but would recommend that the current exemptions remain in place.

NJUG would note that regulators demand certain works, and it is important that the policy framework reflects this. NJUG would like to see greater co-ordination between regulators and the Scottish Government. Similarly, it would be helpful to see much greater co-ordination between economic development teams at local authorities and roads authorities.

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

NJUG supports this proposal. NJUG would like to see greater co-ordination of roads authorities' works. The political and budgetary cycle often sees resurfacing works take place unplanned towards the end of the financial year, with implications for utilities who may have works planned for the following year.

**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?**

NJUG supports this proposal.

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

NJUG does not have a strong objection to this proposal. However, it is important to get clarity on what this would be replaced by. Any proposed replacement needs to be properly scrutinised, and developed in conjunction with industry. Any replacement needs to apply to both authorities and utilities.

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

NJUG supports this proposal as it provides consistency. This would also allow for performance comparisons, which are key to public accountability.

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

Yes.

***Impact***

**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.**

In theory, the proposals outlined should have benefits for more vulnerable groups, including the elderly and those with disabilities, as more efficient roadworks should reduce occupation of the road.

**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?**

The proposals set out in this consultation are likely to increase the cost burden placed on utilities and their contractor partners. An effective use of road quality plans has the potential to reduce costs over time, however this is unlikely to be a short term impact and depends on a cultural shift in which these plans are seen as a replacement rather than an addition to the current regulatory regime.

The changes to the role of the commissioner are likely to add significant cost. There needs to be greater clarity on how these costs will be recovered.

**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.**

The proposals set out in question six are likely to have privacy and security implications. These need to be properly considered.

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

In principle, a more effective policy environment which encourages more efficient roadworks and minimises occupation of the road should have positive environmental implications.

***To discuss any of the ideas in this document further, please contact Angus Hill on 020 7227 1645 or [angus@njug.org](mailto:angus@njug.org).***