

ANGUS COUNCIL

ROADS COMMITTEE

24 JANUARY 2002

RESPONSE TO CONSULTATION DOCUMENT
REDUCING DISRUPTION FROM UTILITIES' ROADWORKS

REPORT BY THE ACTING DIRECTOR OF ROADS

ABSTRACT

The Acting Director of Roads has received a consultation document from the Scottish Executive regarding the proposals aimed at 'Reducing Disruption from Utilities' Roadworks'. This report details the proposed response.

1 RECOMMENDATION

It is recommended that the Committee agree:-

- (i) to note the Consultation Document on Reducing Disruption from Utilities' Roadworks issued by the Scottish Executive(Appendix 1);
- (ii) to note that the Scottish Executive have identified four options for dealing with the problem of disruption from utilities' roadworks (summarised as Options (a), (b), (c) and (d) on page 2 of the Draft Regulatory Appraisal attached to the Scottish Executive's letter of 23 November 2001 (Appendix 1));
- (iii) to note that only Options (c) or (d) are deemed likely to have a significant effect in reducing disruption from utilities' roadworks;
- (iv) to note the Acting Director of Roads' concerns regarding the potential additional administrative and financial burdens which Options (c) or (d) might impose on local authorities in the light of the information currently available;
- (v) to note, notwithstanding (iv) above, that Option (d) is deemed to be the most likely to be effective in reducing disruption from utilities' roadworks;
- (vi) to approve the proposed detailed response to the consultation document (Appendix 2).

2 DETAILS

The Acting Director of Roads has received a consultation document from the Scottish Executive dated 23 November 2001. The consultation document details possible proposals aimed at 'Reducing Disruption from Utilities' Roadworks' and a response

is invited to be received by 22 February 2002. The Scottish Executive's consultation document is reproduced in Appendix 1.

The consultation document discusses the issues of delay and disruption to road users due to works carried out by Utilities (gas, electric, water, telecommunications, cable companies etc) and means of minimising the disruption.

The Utilities have powers under the New Roads and Street Works Act 1991 (NRSWA) to carry out roadworks. However, Section 133 of the Act, which has not previously been activated, allows Roads Authorities to charge Utilities where the latter fail to complete works by an agreed deadline. The consultation paper discusses the possibility of implementing Section 133, which could include 'lane rental' charges for Utilities Works.

Such powers to charge Utilities already exists in England (under Section 74 of the NRSWA) and 'lane rental' is currently being trialed.

The paper discusses the possible financial income from such charges and whether this should be retained by the Roads Authorities or be paid to Central Government. It emphasises that in any case any surplus revenue would be expected to be paid to Central Government.

The Acting Director of Roads' proposed response to the paper is given in Appendix 2 for the Committee's approval.

3 **FINANCIAL IMPLICATIONS**

Capital

There are no financial implications.

Revenue

Depending on the outcome of the consultation and the final decision by Scottish Ministers, there may be a financial impact on the Roads Revenue Budget in respect of the proposals.

The proposals will generate an additional administration burden to agree a works deadline for Utilities works, log the actual completion date and administer any charges occurring.

The overall benefit of the proposals is to encourage a reduction in the disruption and delay to the public. This disruption and delay will not be totally eliminated and the Council will not receive any direct increase in income as a result.

The option for authorities to retain the charges recovered from the Utilities would allow the Roads Department to recover the administration costs. However, the paper

emphasises that, in accordance with Treasury guidelines, a separate account would be appropriate and any surplus would require to be paid to Central Government.

In addition, the paper notes that the income from Option C may decrease in future years as the proposals become effective in reducing the length of time Utilities are involved in roadworks. As a consequence the income to pay for the administration may be less than the cost of the additional administration resulting in a deficit. This deficit would have to be met from the Council's Revenue Budget.

Unless this new burden was met by additional funding there would have to be a reduction in other Revenue Budgets funding essential roads maintenance activities to compensate.

It is also noted that the Utilities, as private commercial companies, may pass their costs on to the consumer, which includes the Council.

The actual costs of this additional burden can not be accurately estimated at this time but would be expected to be in the region of £7,000 - £10,000 per annum.

4 HUMAN RIGHTS IMPLICATIONS

There are no human rights implications arising from the proposals in this report.

5 CONSULTATION

The Chief Executive, the Director of Law and Administration and the Director of Finance have been consulted in the preparation of this report.

6 CONCLUSION

Of the four Options outlined in the Scottish Executive's consultation document on Reducing Disruption from Utilities' Roadworks, Option (d) ("lane rental" charges) appears to offer the best prospect of an effective solution. However, the proposals currently outlined in the consultation document may impose additional administrative and financial burdens on local authorities and these would have to be adequately funded. A recommended detailed response from Angus Council to the consultation document is attached (Appendix 2).

R W McNeil
ACTING DIRECTOR OF ROADS

NOTE:

No background papers, as defined by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to any material extent in preparing the above Report.

IAC/JSG
4 February 2002
REPORTS/utilities.roadworks

REDUCING DISRUPTION FROM UTILITIES ROADWORKS

A CONSULTATION PAPER

RESPONSE FROM ANGUS COUNCIL

January 2002

**Acting Director of Roads
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Market Street
Forfar**

1.0 **Introduction**

- 1.1 Angus Council welcomes the opportunity to comment on the Scottish Executive's Consultation Paper, and any proposals which would deliver a reduction in the disruption and delay to road users which result from roadworks undertaken by Utilities.
- 1.2 This response deals with the general issues and the options identified ((a) to (d)) and discusses the details of the proposals. It concludes with the preferred options in the opinion of Angus Council.

2.0 **General**

- 2.1 The Council welcomes any proposal that delivers a reduction in the disruption and delay to road users from roadworks undertaken by Utilities. It notes that the New Roads and Street Works Act 1991 (NRSWA) was intended to achieve this and that due to various factors, which include the Utilities now being commercial organisations with responsibility to shareholders, the perceived result is that the delay and disruption may now be worse than previously.
- 2.2 Angus Council does not hold any data as to whether the delay and disruption issues have actually worsened since NRSWA came into effect in 1993 (at the time of the former Tayside Regional Council) but do consider that as a result of the increased number of Utility companies (telecommunications and cable companies in particular) and the increased activity of the Utilities (i.e. NOSWA in respect of infrastructure replacement) there is a general increase in the number of Utilities' roadworks and as a consequence an increase in delay and disruption to the road user.
- 2.3 Therefore, it is considered that Option (a) do nothing would not alleviate the problem.
- 2.4 It is the Council's experience that the existing Codes of Practice are open to abuse by the Utilities (and arguably Roads Authorities). This includes a variety of issues such as failure to give adequate notice of works, failure to close out notices of work, charging for estimates and lack of transparency in accounting for costs for cost sharing purposes.
- 2.5 As a result there is often an 'adversarial' approach to users covered by the NRSWA and the Codes of Practice, undermining the joint working principle underpinning the Act.
- 2.6 As such, the certainty and enforceability of formal regulations are considered to be preferred over a voluntary Code of Practice and therefore Option (b) is not considered appropriate based on the Council's experience.
- 2.7 The choice between Option (c) and Option (d) are discussed in detail.
- 2.8 It is noted that Section 74 of NRSWA has already been activated in England. Furthermore, it is noted that there are currently two Roads Authorities in England where 'lane rental' schemes are being applied. It would be beneficial if feedback was available from these areas to Scottish Authorities now considering similar issues.

Where problems have been publicised and are known to the Council these have been included in the details.

2.9 Officers of the Council have had considerable experience in regard to lane rental contracts for road works (on behalf of the Scottish Executive) and would note some of the issues involved which may be applicable to these proposals. These include:-

- (i) The contract duration period is extendable to allow for adverse weather conditions.
- (ii) The lane rental charges are applied in accordance with Technical Memorandum SH4/91 Lane Rental, which includes for the physical extent of the works, the type of traffic management, the type of road, the amount of traffic, the proportion of HGV's and an allowance for the engineering supervision costs.
- (iii) If the contractor completes the works in a shorter time period, he is entitled to receive a bonus equivalent to the penalty of overruns.
- (iv) The contractor undertakes the work direct to the employer usually through competitive tender, and can therefore adjust the works tender price in accordance with the allotted contract period and lane rental charge as he sees fit.

2.10 It is unclear from the proposals if any of these issues would be catered for. In particular:-

- (i) Adverse weather – The Roads Authority may not be in a position to monitor the weather or comprehend the effect it may have on specialised Utility operations.
- (ii) SH4/91 does not detail charges for minor roads/single track/footways etc.
- (iii) The proposed charges are of a penal nature only.
- (iv) The contractor is remote from the Roads Authority imposing the charges. Due to the management structure of Utility companies the contractor undertaking the work may be several times sub-contracted from the Utility. There is no privity of contract. It is assumed that these issues have been addressed from the experience in England.

2.11 Angus Council would express concern over the proposals that the Roads Authority is required to make a judgement on the duration of the proposed Utility works. The Roads Authorities do not have the experience or expertise to access roadworks durations for the wide variety of Utility works which range across technologies including gas, electricity, telecoms and water. The consultation document suggests that “the roads authorities would rapidly give detailed information of the time normally taken for different types of works”. Given the variances of type of apparatus, location, traffic management requirements, depth of apparatus, time of year

for works, type of surfacing or excavation encountered etc it would take extensive research data collection and experience to determine the 'normal' time taken for such works. In particular for Roads Authorities such as Angus which cover relatively large areas of diverse topography and urban/rural divisions this would seem impractical. Furthermore it is suggested that a Roads Authority could impose a duration on a Utility. This would bring into question issues of responsibility for Health and Safety if the Roads Authority imposed a shorter duration than suggested by the Utility. The proposal that any dispute over the duration could be referred to arbitration would seem an impractical solution in terms of time and more importantly the risk of arbitration costs being awarded against the Roads Authority. It is considered that this aspect is an inherent weakness in the Option (c)/Section 1 proposals. However, it is recognised that this issue has presumably been addressed in the circumstances for England.

- 2.12 If the issues detailed in 2.11 are not addressed, it is unlikely that the Roads Authorities will be in a position to challenge the Utilities' proposed duration of works, which would result in the Utilities being at liberty to determine their own timescale, thereby limiting the impact of Option (c)/Section 1 proposals.
- 2.13 Given the amount of Utility roadworks carried out per annum it would be very time consuming for the works duration to be agreed for every occasion. Furthermore, it would be difficult and time consuming to administer the actual completion date, any 'unforeseen' circumstances which would entitle the Utility to extension of the duration or deal with requests for extensions.
- 2.14 Overall, it is essential that any proposals do not require extensive administration and involve relatively simple procedures which are not open to interpretation or ambiguity (in contrast to the current Codes of Practice).
- 2.15 It is considered that the current proposals in Option (c)/Section 1 do not meet the issues in 2.14. In particular, this would seem to be illustrated in the reported case of Suffolk Council issuing solicitors' letters (Surveyor 13/12/01) to recover £5.5m of unpaid charges.

Similarly, it is understood that Bromley Council has experienced difficulties due to emergency works duration and other abuse of the new streetworks charging regime (Surveyor 13/12/01).

- 2.16 It is considered that the current proposals in Option (d)/Section 2 would fulfil the requirements of 2.14 above but it is anticipated that the cost of Utilities roadworks would increase overall which would possibly result in increased charges for consumers and therefore the consumer effectively paying for the delay and disruption costs to road users in a much more identifiable way than at present. Furthermore, this option would seem to undermine the right of Utilities to undertake roadworks.

It would seem beneficial to await the outcome of the trials in England.

- 2.17 Lane rental type charges are used to encourage efficiency and increased productivity. They are often used to substantially reduce the 'normal' contract period.

In applying them to Utility type works there may be a consequential increase in efficiency/productivity etc but there may also be increased working hours causing detrimental environmental effects (noise, etc) in residential areas along with other consequential effects which may not all be beneficial.

3.0 **Specific Issues**

- 3.1 Section 1, Item 3 – The contact between Roads Authorities and Utilities is complicated by the use of agents and sub-contractors. Issues in regard to agreeing the time period were discussed in 2.11 and 2.12 above.
- 3.2 Section 1, Item 4 – The term ‘unforeseen’ would be open to interpretation and is the basis of a substantial number of civil engineering contractual claims. The definition of ‘unforeseen’ would need to be clarified and the extension appropriately determined.
- 3.3 Section 1, Item 5 – The waiver or reduction in charges may be appropriate, but given that Utilities’ activities extend beyond Roads Authority boundaries this may lead to disputes over applications of the regulations.
- 3.4 Section 1, Item 7 – It might be observed that the current sanction against unnecessary delay is ineffective. It is perceived on the basis of experience that the Procurators Fiscal are extremely reluctant to prosecute and utilise criminal justice resources in respect of such relatively “trivial” statutory offences. It is perceived that the Police are reluctant to report such matters to the Procurator Fiscal and few, if any, reports are made by Roads Authorities themselves to Procurators Fiscal for prosecution.
- 3.5 Section 1, Item 8 – See 2.11 and 2.12 above.
- 3.6 Section 1, Item 10 – Reinstatement – seems to be a misconception here – para 1 Roads Authorities would only carry out temporary emergency repairs where necessary, this would not alleviate public frustration. NRSWA encourages ‘first time’ permanent reinstatement and the majority of major works are completed by this method and there is already operating a procedure for charging for defective reinstatement. It is unclear if this proposal replaces or complements what already exists.
- 3.7 Section 1, Item 11 – There would need to be clarification if (for example) only one of five small excavations were incomplete as to whether the whole charges were applied.
- 3.8 Section 1, Item 13 – These would seem to complicate the issue further. Some works may start as excavation in one area only but result in later excavations elsewhere to trace faults etc. A single charge would be preferred.
- 3.9 Section 1, Items 15-18 – It is not practical to establish charges on an SH4/91 type document. In particular, some information, traffic characteristics etc are not necessarily available for rural roads and Item 22 is deemed a more practical solution.
- 3.10 Section 1, Item 19-21 – Using a 1 week period would reduce the number of roadworks covered by the regulations. Regulations would have to be applied to those

which, in the first instance, were notified as 1 week, but which overrun to prevent abuse of the system.

- 3.11 Section 1, Item 22 – The charges would appear high in comparison with SH4/91, particularly for minor lightly trafficked roads and footways and thereby possibly be judged as punitive. However, lower charges would fail to address the issue.
- 3.12 Section 1, Items 23 – 25 – The administration required (see 2.11 to 2.13) would be extensive. Such a new burden on the Roads Authority without financial recovery would place further pressure on already overstretched Revenue Budgets. As a consequence there would either be a requirement to reduce other essential roads services or Roads Authorities are likely to waive the charges and ‘opt’ out of the proposals. It is paramount that the Roads Authorities’ costs in this respect be met in full. The practicalities of operating a separate account can be overcome, if these costs are also met

Carry over of surplus income into future years would also be a requirement if as suggested the proposals have the desired effect of keeping overruns to a minimum. This would enable Authorities to finance the administration costs in future years.

However, there remains a risk that the income will not meet the administration costs involved in any year. This would lead the proposals to fall in to under use.

- 3.13 Section 1, Item 27 – Existing arrangements are considered adequate to cover reinstatement of emergency works.
- 3.14 Section 1, Item 32/33 – ‘Daily whereabouts’ notices have been discontinued since the current Susiephone system was introduced in 1998.
- 3.15 Section 1, Item 34 – Several Roads Authorities already operate a charging system for the inspection costs associated with the occupation of road space by skips, scaffolding etc.
- 3.16 Section 2, Item 37 – See 3.12 above.
- 3.17 Section 2, Item 38 – It would not currently be possible to estimate the proportion of payments, based on estimates of averages until the scheme had been in existence for some time.

4.0 **Conclusion**

- 4.1 Angus Council support proposals to reduce the delay and disruption due to Utilities’ roadworks.
- 4.2 Any proposed system has to be regulatory, clear, simple and concise to avoid abuse and disputes over interpretation currently experienced with the Codes of Practice.
- 4.3 The proposal has to be self-financing to ensure its use by already financially burdened Roads Authorities.

- 4.4 Option (d)/Section 2 - 'lane rental' proposals is the most suitable option to satisfy both 4.2 and 4.3.
- 4.5 Angus Council would welcome further consultation and information regarding the success of both the Section 74 regulations and 'lane rental' use in England.
- 4.6 Angus Council would welcome further consideration of the use of excess funds which may vire from Option (d)/Section 2 to be reinvested, either through the Roads Authorities or a separate account with the Scottish Executive, into roads maintenance. In particular, the works undertaken by Utilities has a detrimental effect on the structural life of the road network and the reinvestment would allow some of the current imbalance of costs to be readdressed.