

## **EAST AYRSHIRE COUNCIL**

**KILMARNOCK SOUTH AREA LOCAL COMMITTEE: 19 May 2004**

### **PUBLIC UTILITY ACTIVITIES ON PUBLIC HIGHWAY**

#### **Report by Executive Director of Development & Property Services**

## **1 PURPOSE OF REPORT**

- 1.1** To advise Committee on the legislation governing the activities of utilities companies working within the limits of the public highway.

## **2 BACKGROUND**

- 2.1** Utility companies have a statutory right to carry out street works as part of providing the public with services such as electricity, gas, telecommunications and water that are regarded as essential in a modern society.

The primary legislation governing Statutory Undertakers activities is the "New Roads and Street Works Act 1991" (NRSWA).

The Act is supported by various Codes of Practice which provide either recommendations or requirements to assist all parties in the management of street works.

## **3 ROLE OF THE ROADS AUTHORITY**

- 3.1** The Act defines the duties of the Roads Authority with regard to Public Utilities works and sets limits on the Roads Authority's powers to regulate and supervise Utilities works on the road.

- 3.2** Within the terms of the Act the Roads Authority is paid to carry out an inspection of 30% of sites which includes a specific proportion of inspections at three stages of the works. These stages are categorised as follows:-

- 1) during the progress of the works.
- 2) within 6 months following interim or permanent reinstatement.
- 3) within three months preceding the end of the guarantee period.

During the period April 2003 to March 2004 East Ayrshire received 4025 notices of proposed works and subsequently carried out 1283 inspections. A failure rate of 45% confirms that Undertakers quality and control measures are unacceptable. It is also clear that an inspection parameter of 30% of openings is insufficient to allow the Roads Authority to exert effective quality control.

Where defects in reinstatements or inadequacies in signing lighting and guarding are found provision is made to recover additional costs either in the form of set fees or actual time spent costs. However charging for defective

work is not always automatic. The Code of Practice for Inspections, 2003, sets out a procedure which offers the Utilities an opportunity to remedy a defect within a set timescale e.g. 2 hourly, 4 hourly response for emergency situations. Only after failure to respond would the Roads Authority carry out necessary remedial works and be entitled to recover reasonable costs.

In view of the high number of defective works found each year, necessary policing of defective signing, lighting and guarding and failure to complete works, cannot be achieved with the existing resources.

- 3.3** The Roads Authority is also empowered to carry out such investigatory works (e.g. coring) as appear to be necessary to ascertain that Utilities are complying with specification standards. However the cost of these investigatory works is borne by the Roads Division. Only when a failure is found can the cost of investigatory works be recovered.

A coring exercise carried out at the end of 2002 revealed the following results

| <b>Utility</b> | <b>%age Failures</b> |
|----------------|----------------------|
| Scottish Power | 80%                  |
| Scottish Water | 57%                  |
| Transco        | 27%                  |
| BT             | 40%                  |
| OMNE           | 27%                  |

Further investigatory works are planned for the summer of 2004.

- 3.4** In addition to processing of individual openings on a daily basis the Roads Division works closely with neighbouring Councils and the Utilities companies through regular joint committee meetings -“Roads and Utilities Committee” (R.A.U.C.). All Ayrshire and South West Scotland meetings take place on a quarterly basis. R.A.U.C. meetings provide an opportunity for members to programme works well in advance and to discuss major operational issues.

#### **4 PROPOSED CHANGES TO REGULATIONS**

- 4.1** In order to address the ever increasing disruption caused to road users the Scottish Executive has, in recent years, sought Roads Authority’s response on “Reducing Disruption from Utility Companies roadworks.” Solutions were based on alternative ways of implementing road possession charging for unnecessary occupation of the road or footway.

The favoured solution of recovering costs due to delays is based on a lane rental scheme (road possession) whereby a daily charge is imposed on a Utility for occupation of the public highway. The scheme also provides stiff financial incentives to co-ordinate works, optimise performance and minimise the timescale of the works.

Initial consultations with other Road Authorities indicate that they are all in favour of a lane rental process, with charges being retained by the Roads Authority.

This system is already being trialled in a number of Authorities in England. While early information suggests that lane rental may be the best way forward, feedback from the National Utilities Group, energy regulator Ofgem and water regulator Ofwat suggests that they will resist any form of charging. The results of the trials should be publicised during the summer of this year.

Once the subject of “Reducing disruption from Utility Companies roadworks” has been completed the Scottish executive intend to carry out a review of the entire reinstatement regime.

- 4.2** In tandem with the above a new Traffic Management Bill is presently going through Parliament which aims to tackle urban congestion. The Bill focuses on a number of areas on which the Government believes that legislation can deliver a swift and significant impact on congestion and disruption on the roads (Appendix 1 provides a brief summary of the aims and benefits of the Bill).  
If successful Roads Authorities will be in a much stronger position to deal with Utilities companies. Although the new measures only apply to England and Wales it is anticipated that implementation would be readily accepted by the Scottish Parliament.

## **5 LEGAL IMPLICATIONS**

- 5.1** The Roads Authorities and Public Utilities are governed by the New Road and Street Works Act 1991.

## **6 FINANCIAL IMPLICATIONS**

- 6.1** The cost of standard inspections of reinstatements is financed by the Public Utilities and is based on the number of openings carried out.
- 6.2** Processing of defective works may provide additional income, but is dependent on the nature and number of failures.
- 6.3** The introduction of a Lane Rental Scheme could provide the Roads Authority with a source of income to cover administrative costs.

## **7 RECOMMENDATIONS**

- 7.1 The Committee is asked to note the present situation with respect to management and control of Public Utility Operations.

**J. Lavery**  
**Executive Director of Development & Property Services**

**19 May 2004**

### **BACKGROUND PAPERS** **Nil**

For further information on the contents of this report, please contact Brian Weadon, Roads & Transportation Division, on 01563 576310

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#### **Appendix 1- Extract From Proposed Traffic Management Bill Impact Assessment**

##### **Purpose of the Traffic Management Bill**

This Bill aims to ensure that the Highways Agency and local authorities are properly equipped with the powers that will enable them to tackle congestion, and properly focus on the task in hand. Its contents can be usefully divided into four parts, although those parts are by no means entirely separate. They can be outlined as follows:

- The Bill will provide for the Highways Agency to develop its role as a network manager, empowering the Agency to recruit Traffic Officers to manage planned and unplanned incidents on the road network.
- To ensure a co-ordinated approach the Bill will require local traffic authorities to have someone (the "Traffic Manager") responsible for ensuring they meet a statutory duty to keep traffic flowing on their roads.

- The Bill may provide a new regulatory regime for utility companies' street works, amending existing legislation to give highway authorities effective controls over those works.
- The Bill, in its present form, allows for more civil enforcement of parking and moving traffic offences.

### **Street Works**

The various offences under NRSWA cover a wide range of duties including ensuring:

- that street authorities are given sufficient advance notice by undertakers of future works and of the start and finish of individual works;
- that works are carried out to a high standard (e.g. that the road surface is properly restored after works are completed);
- that those carrying out works are properly qualified to do so;
- that works are properly signed, guarded and lit, to ensure that they are safe.

The changes to the enforcement regime within the Bill is to encourage greater compliance with the various duties under Part III of NRSWA and the Highways Act and to help ensure that those who fail to comply are detected and suitably dealt with. The low number of prosecutions under the existing enforcement regime, coupled with the strong views of authorities expressed in the Government's consultations, makes a convincing case that the status quo is not acceptable.

The Government also considers that a failure to improve the enforcement regime that presently exists would jeopardise the impact of the rest of the street works legislation within the Traffic Management Bill. The costs of the provisions are likely to be small in comparison with the benefits that come from better compliance, especially as any increased costs are avoidable if utilities operate within the boundaries of the law.

Given the above, it is recommended that increased maximum fine levels should be introduced and provision made to introduce a fixed penalty notice system for certain offences.

The Government also intends to consider the possibility of authorities' retaining some or all of the fine revenue to offset the cost to them of operating a Fixed Penalty Notice scheme. It is not necessary to amend primary legislation to allow for this.

### **Summary**

An improved enforcement regime should result in works that are safer, and carried out speedily but to a high standard by properly qualified staff. Also, by ensuring that authorities are provided with timely and accurate information on individual works it should be easier for authorities to co-ordinate Utilities works with their own works which will in turn reduce the disruption to road users, businesses and local residents.