

EAST AYRSHIRE COUNCIL

DEVELOPMENT SERVICES COMMITTEE – 21 OCTOBER 2003

NEW ROADS & STREETWORKS ACT 1991 – RECENT CONSULTATION PAPERS

Report by Director of Development Services

1. PURPOSE OF REPORT

- 1.1** To advise the Committee of the issue by the Scottish Executive of three consultation documents relating to the New Road and Streetworks Act 1991 which came into effect on 1 October 2003, advise the Committee of responses that have been made and to consider the implications for staff resources to comply with these changes proposed.

2. BACKGROUND

- 2.1** The New Road and Streetworks Act (NRSWA) was introduced in 1991 primarily to make the Public Utilities more accountable for their operations and reinstatements on public roads. Whenever a Public Utility (or a contractor employed by them) digs up a public road they have to comply with the rules and regulations as described in the NRSWA 1991. This act also defines the duties of the Roads Authority with regard to Public Utilities works and sets limits on the Roads Authority's power to regulate and supervise Public Utilities works in the road.
- 2.2** The issue of the amended documents is intended to update and remove ambiguities from the earlier Act to improve the performance of the Public Utilities with regard to road openings and their reinstatement.
- 2.3** Complaints about the management of Public Utilities companies roadworks and the quality of reinstatements are one of the most common forms of complaints reported to Roads Authorities.

3. CONSULTATION DOCUMENTS

- 3.1** **New Road and Streetworks Act 1991 : The Road works (Reinstatement)(Scotland) Amendment Regulations 2003 and Specification for the Reinstatement of openings in the Road Code of Practice.**
- 3.1.1** These regulations amend the Road Works (Reinstatement)(Scotland) Regulations 1992. The 1992 Regulations prescribe requirements for the specification of materials to be used, and the standard of workmanship to be observed by undertakers in reinstating streets by reference to a Code of Practice issued in 1992. The amended Regulations update the reference to the proposed new Code of Practice.

3.1.2 It is considered that this Code is unsatisfactory in a number of respects including:

- Specifications which are difficult to apply 'on the job'
- Inaccuracies in references to specifications
- Failure to introduce acceptable standards for step backs in the excavation of surfacing layers and to reinstatement to prevent water ingress
- Excessive levels of tolerance for subsidence of areas which have been reinstated

Unsatisfactory step backs and subsidence are the two most common reasons for failure of reinstatements. They shorten the life of the road surface and may result in uncomfortable and unsafe driving conditions.

3.1.3 A detailed reply to this consultation was submitted to the Scottish executive, but has been disregarded.

3.2 New Roads and Street Works Act 1991 : The Road Works (Inspection Fees)(Scotland) Regulations 2003 and Revised Code of Practice for Inspections.

3.2.1 While there was no limit to the inspections which an authority may make , the Regulations place a limit of 30% on the number of inspections for which a utility company may be charged by the road authority. They also set a flat fee for each inspection. The 1992 Regulations prescribe the basis for the inspection regime and a non-statutory code of practice for inspections came into force on 1 January 1993.

3.2.2 The new regulations are intended to reform the basis on which roads authorities may charge for carrying out a proportion of their routine inspection of utilities road works and will revise the non-statutory code of practice.

3.2.3 The main change in the charging regime is that the number of phases within which chargeable inspections may be carried out are reduced from 5 to 3, focussing on those times most likely to indicate the long-term performance of a reinstatement i.e:

- During reinstatement works
- Up to 6 months after completion
- 3 months before the end of the 2 or 3 year guarantee period.

In addition:

- The proportion of excavations for which an inspection fee may be charged is correspondingly adjusted from 6% to 10% at each phase so that the overall maximum proportion of chargeable inspections remains at 30% of the undertakers estimated excavations.
- The fee is increased to £20.00 from £15.50 for inspections to be paid by the undertakers.

3.2.4 In-house Seminars have been arranged for relevant staff to ensure that they are aware of the changes to the Code of Practice.

3.2.5 These changes are broadly acceptable. But the effectiveness of the inspection regime depends on:

- Effective quality control by the utilities since local authority inspections are only carried out at a sample of sites
- The capacity of the roads authority to take follow up enforcement action

3.2.6 The revised Code of Practice for inspections establishes an onerous non-statutory regime which stipulates the need for accurate record keeping and time limits for taking action on defects. Whilst, however, the clarification of reporting requirements should be helpful, the new procedures will impose an additional burden on the local authority's inspections.

3.3 New Road and Streetworks Act 1991: The Roads Works (Recovery of Costs) Regulations 2003

3.3.1 These Regulations prescribe the basis for calculating the costs which an authority, body or person may recover under Part IV of the NRSWA 1991. For example, if it appears to a roads authority that a failure by an undertaker to comply with its duties to reinstate a road is causing a danger to users of the road, the authority may carry out the necessary works and may recover from the undertaker the costs reasonably incurred by them in doing so. The Regulations prescribe that costs shall comprise direct costs and overheads and define what categories of direct costs may be claimed. They also prescribe how overheads are calculated.

3.3.2 The standardisation of procedures for reclaiming costs should reduce the potential for dispute by the utility companies. It is not proposed to introduce standard rates – it will continue to be possible to claim the full cost of remedial work.

4 PROPOSAL FOR AN ENFORCEMENT OFFICER

4.1 In recent years there has been a substantial increase in the number of utility works as a result of increased investment in renewal and enhancement. The quality performance of the operators has also fallen badly behind the standards expected as reported previously to Committee. These developments have placed increasing pressure on the Roads Division's

capacity to monitor utility works and enforce compliance with the Codes of Practice and Standards. The new reporting procedures (see para 3.2.6) will add further pressures.

- 4.2** The increased charges, however, offer an opportunity to consider reinforcing the Council's enforcement capability. It is proposed to supplement the work of the Street Inspectors who undertake routine utility inspections with the appointment of an Enforcement Officer. The Officer will be charged with following up fault reports with the utility companies, arranging where necessary to carry out remedial work, and if appropriate initiating legal action to penalise companies which demonstrate consistent failure to meet standards.

5. LEGAL IMPLICATIONS

- 5.1** The Roads Authorities and Public Utilities are governed by the NRSWA 1991.

6. FINANCIAL IMPLICATIONS

- 6.1** The roads authority currently receives a fee for the authorised number of inspections carried out.
- 6.2** To fully implement the proposals of the consultation paper would require an additional member of staff. This salary would initially be met from Departmental Budget. It is anticipated that in future the fees charged to the utilities for retesting failed reinstatements would cover the cost.

7 RECOMMENDATIONS

- 7.1** The Committee is requested:
- (a) to note the consultation documents issued by the Scottish Executive to amend the NWSRA 1991 and that responses have been returned to the Scottish Executive;
 - (b) to approve in principle the appointment of an Enforcement Officer; and
 - (c) refer (b) to the Corporate Governance Committee for consideration of appropriate terms and conditions.

Stephen Chorley
Director of Development Services
3 October 2003
JK/YK

LIST OF BACKGROUND PAPERS

New Road and Street Works Act 1991:

1. The road works (Reinstatement) (Scotland) amendment regulations 2003 and specification for the reinstatement of openings in roads code of practice.
2. The Road Works (Inspection Fees) (Scotland) Regulations 2003 and revised Code of Practice for Inspections.
3. The Road Works (Recovery of Costs) Regulations 2003

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