

**STRATEGIC CONSULTATION ON WORKS ON SCOTTISH ROADS  
ANALYSIS OF CONSULTATION RESPONSES**

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Fran Warren

Transport Scotland

Kate Skellington Orr

KSO Research

Transport Scotland

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## EXECUTIVE SUMMARY

### Introduction

This report analyses and summarises responses that were received to the 'Strategic Consultation on Works on Scottish Roads' which was launched in April 2013. This was the first major consultation on road works since 2003, and the first since the Scottish Road Works Commissioner was appointed in 2007.

The consultation sought views on a range of proposals that had been considered by the Scottish Road Works Policy Development Group, though it did not commit Scottish Ministers to abide by its findings.

The consultation included 33 separate questions across six different policy areas, these being:

- The road network as an asset;
- Time taken to complete works;
- Compliance and enforcement;
- Review of other current and proposed legislation;
- Co-ordination of works; and
- Issues not covered elsewhere in the consultation.

The consultation was distributed to 88 different organisations, including the 35 utility companies and 33 roads authorities that operate in Scotland, as well as being made available on the Transport Scotland website.

### Analysis of Responses

A total of 50 responses were received. This included responses from 30 roads authorities and related bodies (60%), 13 utility companies and related organisations (26%), six 'other' organisations which had no affiliation with either of the two main groupings (12%), and one individual (2%).

All responses were read and logged into a database. Comments given at each question were examined and, where questions elicited a positive or negative response, they were categorised as such. For most of the questions, respondents were also asked to state the reasons for their views, or to explain their answers. The main reasons presented by respondents both for and against the various specific proposals were reviewed, alongside specific examples or explanations, alternative suggestions, caveats to support and other related comments. These are summarised here.

### Main Findings

#### The Road Network as an Asset

Maintaining the condition of the roads and protecting the roads as an asset is vital for Scotland's economic prosperity. Thirty three respondents (29 of whom were roads authorities) supported the introduction of **contribution costs** from utility companies to the costs of making good the long term damage that is caused to roads by works. The level of contribution most commonly suggested amongst those supporting a contribution was 17%. Despite this, several respondents suggested that implementation of a contribution scheme could prove challenging and a scheme which would

be introduced gradually and included incentives for utility companies was seen as preferable. Among those opposing any contribution, it was felt the proposal was based on poor evidence. The majority of those favouring the introduction of contribution costs were roads authorities. All utilities and one roads authority opposed the introduction of contribution costs.

While current legislation allows for a one year period after a road has been resurfaced before it can be excavated again by a utility company, there was widespread support for changing the period of **restriction after re-surfacing** to three years, and for adopting this into legislation. Overall, there was agreement that the voluntary three year restriction period had worked well, but that adoption into legislation would remove inconsistency between the legislation and the Code of Practice.

The majority of roads authority respondents also expressed that increased **inspections** would improve the quality of reinstatements. In contrast, those representing utility companies perceived any increase in inspections as unnecessary, and around half supported a reduction in inspections for high performing utility companies. Amongst those supporting an increase in the level of inspection, Category C inspections were considered most in need of an increase, followed by Category A inspections. There was also broad support across the groups for a change in inspection fees where a utility company is performing poorly, including a performance element. Over half of utility company respondents, however, stated that additional regulation was not necessary.

There was also disagreement between utility companies and others with regard to **guarantee periods**. Among roads authorities, there was a perception that increased guarantee periods would drive up standards and lead to better quality and more durable reinstatements. The main objection to the proposals was a perceived lack of evidence to demonstrate that reinstatements that have not failed after 2/3 years would go on to fail in the longer term.

#### Time taken to complete works

In the interests of ensuring the timely completion of works, a range of possible initiatives for consideration were set out in the consultation, namely, occupation charges, permit schemes and lane rental schemes.

There was very limited support for the introduction of **occupation charges**, since respondents felt that most delays were genuine and it would be difficult to judge otherwise if delays were not legitimate. The introduction of charging was also seen as being potentially administratively burdensome for both roads authorities and utility companies alike.

Similarly, the introduction of **permit schemes** was seen as unnecessary since respondents considered that the current arrangements for coordinating works using the Scottish Road Works Register, along with the existing provisions available to roads authorities, work well. The main arguments offered against the introduction of permit schemes were likely high administration costs, bureaucracy and the potential for costs to be passed on to consumers.

Support for **lane rental schemes** was also very limited. The majority of respondents viewed lane rental schemes as unnecessary and lacking in evidence to support them. Further research and evidence was seen as being necessary to demonstrate their relative costs/benefits. Overall, therefore, while respondents seemed committed to ensuring that works are completed within reasonable periods, the proposals set out in the consultation gained, at best, limited support.

## Compliance and Enforcement

Both roads authorities and utility companies have duties in relation to the way in which works in roads are managed and undertaken. Failure to comply with such duties among utility companies can result in roads authority administered fines. The Commissioner can also impose penalties on both roads authorities and utility companies for neglect of duty in relation to road works.

When asked whether there should be an **extension of existing summary offences** dischargeable by fixed penalty notice (FPN) under the New Roads and Street Works Act (NRSWA), there was a clear split in views expressed by roads authorities and utility companies. The majority of roads authority respondents felt that the current system was not working and an extension of existing summary offences dischargeable by a FPN would lead to better quality reinstatements, fewer unauthorised road works and improved performance in signing, lighting and guarding. In contrast, utility companies and their affiliates considered the proposed changes were unnecessary, stating that there were already suitable measures in place to address non-compliance. There was moderate support for the creation of **new summary offences** dischargeable by FPNs and, again, those in support felt that roads authorities were currently unable to manage utility company non-compliance within existing legislation.

There was general support for an **increase in FPN amounts** which, at a minimum, would be in line with inflation. Views on the **Commissioner Penalty Limits** required to influence the behaviour of utility companies and roads authorities to comply with their current duties were more varied. In broad terms, 21 respondents (42%) thought the level of penalty should be increased (and most agreed this should be in line with inflation), while 18 (36%) thought it should remain at the same level. All utility company respondents opposed an increase in the maximum level of penalty.

Finally on compliance and enforcement, there was considerable opposition across the board towards revising legislation to state that penalties could be imposed for failure to comply 'such practice as appears by the Scottish Road Works Commissioner to be desirable'. Many respondents stated that the definition needed to be clearer and not open to misinterpretation. Those who disagreed with all parts of the proposed revised definition stated that the existing **definitions of 'co-operate' and 'co-ordinate'**, if used effectively, were already fit for purpose.

## Review of Other Current and Proposed Legislation

The consultation provided a valuable opportunity to open up for discussion several issues in relation to the way in which road works are undertaken, which could be improved by revisions to legislation.

On the issue of **safety at road works**, the majority of respondents agreed that the Code of Practice for Safety at Street Works and Road Works should become mandatory for roads authorities. The main reasons for support were; consistency, parity of treatment and the removal of the anomaly of different prosecution levels, improved safety at road works for both operatives and road users/public, and improved quality of works and reduced disruption. Those who disagreed with this proposal reported that roads authorities are obliged to comply with Chapter 8 of the Traffic Signs Manual. It was also their opinion that the Code of Practice was more suited to works of an isolated excavation nature, and thus may not be detailed enough to cover the full range of activities carried out by roads authorities.

The majority of respondents also agreed, in principle, that it should be made mandatory for all utility companies and roads authorities to hold digital records of their **apparatus in roads** and to provide such digital records for use on the Scottish Road Works Register (SRWR). That being said, most were aware of the significant scale of this exercise and the associated resource implications which were likely to result.

The vast majority of respondents also agreed with the proposal that Section 61 of the Roads (Scotland) Act 1984 be repealed and **Section 109(2) of NRSWA** revised to provide more clarity as to where responsibility for record keeping of apparatus should lie. This would reduce confusion and uncertainty, bring consistency and clarity (to roles and responsibilities and record keeping *per se*) and be a more efficient way of undertaking works, it was perceived.

Similarly, the majority of respondents agreed with proposals to create a new legal entity of '**major road manager**' in the interests of assisting in the co-ordination of works. The only resistance to this proposal came from those who queried the robustness of evidence indicating the need for such a role. Others perceived that road managers would lack relevance in rural areas and some had concerns around data security/access to information which would ordinarily be restricted.

#### Co-ordination of works

Roads authorities have responsibility for co-ordinating all road works by utility companies as well as works for road purposes. The aim is to balance the statutory rights of roads authorities and utility companies, with the expectation that disruption from works shall be kept to a minimum.

Views on changing the three month **advance notice period** for major works to remove a potential barrier to good co-ordination of works were mixed. The majority of respondents thought that the three month period was necessary for good co-ordination, and provided the necessary flexibility required. That being said, there was also some support for a reduction in the noticing period, which was perceived as excessive in rural areas and can have negative consequences in terms of increasing the number of early starts. The majority of respondents from all groups, however, thought that the requirement to provide **advance notice for works on non-traffic sensitive roads** should be maintained.

To assist with better co-ordination of works, the majority of respondents agreed that the **early start procedure** to allow works to start without providing the statutory minimum notice period in some cases should be placed on a statutory footing. Where this was opposed, the main reasons was that the voluntary use of non-statutory advice was already seen as adequate, and as a good example of the way in which roads authorities and utility companies co-operate to co-ordinate road works. Overall, responses were not supportive of any change to existing requirements in relation to **urgent works**, however, the main reasons being that the change would not fix the problem of misuse of the urgent works classification and that urgent works often cannot be started immediately in any case.

On the issue of **roads authority noticing obligations**, just under half of respondents expressed outright support for the introduction of legislation to ensure that roads authorities are required to provide the same information as utilities companies on the SRWR. The main reasons for supporting the proposals were: ensuring that the fullest and most accurate information is available to the Commissioner; facilitating planning programming and co-ordination of works to the fullest; and achieving parity and equity between both roads authorities and utility companies, i.e. all abiding by



the same rules. The main drawback was perceived to be that the time required to place notices for all works may outweigh the benefits of doing so.

There was considerable support for the introduction of regulations to allow roads authorities flexibility around placing notices for **minor works involving no or minimal excavation** on non-traffic sensitive roads. It was felt that this would formalise practice that is already widely used. Support for flexibility was backed up by feelings that such works are minimally disruptive, have little impact on the public, and would be administratively burdensome to manage otherwise. While people supported the introduction of flexibility, clear guidance is needed, it seems, on the circumstances in which it can be used.

There was unanimous support for regulations to be introduced to require roads authorities and utility companies to enter **actual start notices** on to the SRWR. The main reasons offered in support were improved co-ordination of works, provision of an audit trail and improved knowledge about who else was working in the vicinity (or was planning to). There was also support for penalising non-compliance with such regulations, if it was introduced.

Responses were mixed with regard to the current requirement for **actual start notices to be lodged by noon the following day** for all works in roads, including traffic sensitive roads. Respondents tended either to support the current requirements, or suggested that notices could/should be lodged sooner, where possible. The consensus was for the most up-to-date information to be available.

The majority of respondents also felt that the current requirement for **works closed notices** to be lodged by the end of the next working day was a reasonable period. Existing arrangements are perceived to work well and are realistic and achievable for all. The consensus was that works closed notices are less critical than starts, because they effectively reduce potential delays and problems rather than increasing them.

The question around potentially reducing the **validity period** between intended and actual start dates of works produced some relatively lengthy and detailed responses compared to other sections of the consultation. Most people were in favour of leaving the validity periods as they are at present, the main reason being that they afford flexibility in the case of unanticipated delays to start of works. The main reasons given in support of the reduction of the validity period to a maximum of two days were to assist in co-ordination of works with more accuracy in relation to actual start dates. Respondents generally also supported the idea that utilities and road works authorities should be treated the same with regards to validity periods.

Most of those supporting statutory powers to impose maximum **durations for works** on utility companies were roads authorities, although those against the proposals were split evenly between groups. Strong views were expressed by utility companies that only they possessed the requisite technical skills, knowledge and experience to be able to appropriately gauge durations required for works. Several respondents felt that New Roads and Street Works Act (NRSWA) Section 115 already adequately covered this issue. Therefore, it was proposed that greater penalties should exist for ignoring NRSWA Section 115 directions, rather than allowing roads authorities to dictate the duration of utilities' works.

The consultation sought views on whether roads authorities should be given statutory powers to impose **embargoes** on works for reasons other than traffic disruption and the issue again provided a clear split in responses between groups. Almost all of those who supported the proposal represented roads authorities and related bodies and none of the utility companies and related organisations who responded supported the introduction of such powers. Those who supported the introduction of statutory powers in this regard felt that it would formalise a voluntary system that was already working well. Most of those against the introduction of statutory powers in this regard also felt that the present voluntary system was working well and so did not need a statutory footing.

Also in the interests of improving co-ordination, the consultation included a revised definition of 'working day', as agreed by the Scottish road works community. More than half of respondents supported the definition of 'working day' given in the consultation document on the basis that it was clear, relevant and locally appropriate. The main reason for not agreeing with the definition was that the definition of working day in Section 157(2) of NRSWA was already satisfactory, with a definition of bank holiday exclusions. The large majority of those who agreed with the definition represented roads authorities (24 out of 29 who agreed) and the majority of those who did not agree represented utilities (eight out of the 11 who did not agree).

#### Other Issues

A large number of disparate comments were made in response to the final three consultation questions, with considerable feedback from both roads authorities and utility companies on issues not covered elsewhere in the consultation. Most of the closing comments made by respondents reflected the views already set out earlier in the consultation around the consequences of sharing costs for making good roads, and sharing responsibilities for ensuring that works are closed timeously and in good order. The need for parity between the two groups in terms of accountability was again stressed.

Several ideas for innovations were put forward and comments reflect a general commitment to learn from best practice wherever possible. It seems it was not possible within the scope of the current consultation for respondents to provide accurate cost implication feedback from the proposals, but there was consensus that careful planning would be required, including detailed cost analysis, before any of the consultation proposals were implemented.

### **Closing Comments**

The consultation produced an encouraging response from the Scottish road works community and others. Responses have provided a clear steer on those proposals that would and would not receive support from the community, and have shown the main areas where there is divergence in opinion between roads authorities and utility companies. Several suggestions for changes to existing guidelines and policy were put forward to improve the planning and co-ordination of works, and there seems a general commitment between all parties to achieving the safe, effective and efficient completion of works that minimise disruption and costs to road users and consumers. Regular and ongoing communication between roads authorities, utility companies and the Commissioner seems to be key to the future successful planning and delivery of works on Scottish roads.

Given the wide-ranging nature of the consultation, the Scottish Ministers will need to carefully consider this analysis of responses received in relation to next steps and policy options. These are likely to take the form of separate workstreams which may in themselves require further consultation particularly where legislation is required.

# 1. INTRODUCTION

## Background

1.1 This report analyses and summarises all of the responses that were received to the 'Strategic Consultation on Works on Scottish Roads' which was launched in April 2013 with a three month period open for responses. This was the first major consultation on road works since 2003, and the first since the Scottish Road Works Commissioner was appointed in 2007.

1.2 The Scottish Road Works Commissioner's office was established to monitor works in roads and to promote good practice. The first Commissioner was appointed in 2007, following the creation of the post as part of the Transport (Scotland) Act 2005. As part of this consultation, the Commissioner worked with the Scottish Road Works Policy Development Group to identify potential improvements to the planning, co-ordination and quality of Road Works. The consultation sought views on a range of proposals that had been considered by the Scottish Road Works Policy Development Group, though it did not commit Scottish Ministers to abide by its findings, and also included specific issues raised by the Minister for Transport and Veterans.

1.3 Road works are principally undertaken for two reasons, either by roads authorities to repair, renew or improve roads; or by utility companies to place, repair, renew or improve their pipes and cables. Road works are undertaken in Scotland under the New Roads and Street Works Act 1991 (NRSWA), as amended by the Transport (Scotland) Act 2005. The legislation defines roads authorities as 'road works authorities' and places them under a duty to co-ordinate road works including those undertaken by utility companies or 'undertakers' for the purposes of the legislation. Utility companies have statutory rights to place, repair, renew or improve their pipes and cables in roads, subject to meeting certain duties. It is inevitable that works in roads will be required to ensure that the structure of roads and the pipes and cables located in the road are well maintained.

1.4 Transport Scotland launched the consultation on 9 April 2013, with the aim of introducing further improvements to works on Scottish roads. The aims of the consultation were to:

- Improve the safety of those who use or work on roads;
- Minimise the disruption and inconvenience caused by works; and
- Protect the structure of roads and the integrity of the pipes and cables under them.

1.5 The strategic consultation covered six policy areas. It did not propose specific legislation, but instead sought views on each policy area. The consultation consisted of 33 questions, which were a mixture of those which could be answered 'yes/no' and those which were more open, or sought views on proposals to which there was no stated policy from Scottish Government.

1.6 Section 1 of the consultation sought views on utility companies being required to provide contributions to make good the costs of long term damage. It also explored restrictions in favour of the minimum period from a new road surface being laid to when new road works can occur; and explored changes to inspection arrangements including the introduction of new levels of fees, and extending guarantee periods post-works on roads. The second section considered a range of approaches to improving the time taken to complete works, including occupation charges, permit

and lane rental schemes. Section 3 covered issues of compliance and enforcement, including questions on the operation and levels of fixed penalty notices. Section 4 covered a range of current and proposed legislation, including safety at road works, record keeping, and legislative definitions. Section 5 covered co-ordination of road works, particularly looking at advance notice periods and early starts, and also issues of traffic sensitive and non-traffic sensitive roads. Section 6 invited responses on 'other' issues not covered directly in the consultation, and also invited comments on innovation and financial implications of the possible introduction of various proposals set out in the consultation document.

1.7 The consultation was distributed to 88 different organisations including the 35 utility companies and 33 roads authorities that operate in Scotland, as well as being made available on the Transport Scotland website.

## **Overview of responses**

1.8 In total, 50 responses were received, 49 from organisations and one from an individual. As part of the analysis process, responses were assigned to groups. This enabled analysis of whether differences, or commonalities, appeared across the various different types of organisations that responded.

1.9 Table 1.1 presents a list of respondents by group. As can be seen, most organisational responses came from local authorities (acting as roads authorities and the bodies that represent them). The next most common type of respondent was utility companies and related organisations<sup>1</sup>. 'Other organisations' refers to those which had no affiliation with the two main groupings.

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<sup>1</sup> Many of the respondents referred to utility companies and related organisations collectively as 'statutory undertakers', 'SUs' or 'undertakers' and this is reflected in the quotes used in this report.

**Table 1.1 Consultation responses by group**

<b>Respondent</b>	<b>Group Number</b>	<b>Number of respondents (% of all respondents)</b>
Roads authorities and related bodies	1	30 (60%)
Utility companies and related organisations	2	13 (26%)
Other organisations	3	6 (12%)
Individuals	4	1 (2%)
Total Organisations		49 (98%)
<b>Total</b>		<b>50</b>

1.10 A list of all those organisations who submitted a response to the consultation is included in Appendix 1. One respondent from group two requested that their response remain anonymous. Thirteen responses were received from those not on the original distribution list. Two of these were from group one, four of these were from group two, six of these were from group three and one from group four.

## **Analysis**

1.11 All responses were read through and logged into a database. Comments given at each question were examined and, where questions elicited a positive or negative response, were categorised as such. In most of the questions, respondents were also asked to state the reasons for their views, or to explain their answer. The main reasons presented by respondents for and against specific proposals were reviewed, alongside specific examples or explanations, alternative suggestions, caveats to support and other related comments.

1.12 Responses that did not fit into the response template were read, and where the content related to an individual question their views were added to the positive or negative totals for the question where appropriate. However, as some questions asked for views on proposals rather than specifically support or opposition to proposals, it was not always possible to ascertain support or disagreement, and this should be considered when reading any proportions mentioned in the reporting. When this occurred, it has been categorised as respondents suggesting an 'alternative view'.

1.13 Lastly, all respondents were responding voluntarily, rather than as a part of a statutory process, or as a part of statistically representative research. This means that the consultation analysis is representative only of the organisations and individuals who responded, rather than of the general public as a whole.

## **Structure of reporting**

1.14 The 'Strategic Consultation on Works on Scottish Roads' was a comprehensive document including 33 individual questions, many of which included sub questions. It was therefore important to employ a consistent approach to analysis across each of the 33 questions to ensure that all relevant points raised by all groups were considered. Each question therefore starts by outlining response numbers, then summarises key themes – three themes which were cited most often by respondents. It then goes on to outline the main reasons for supporting a proposal, followed by any caveats to this support, issues/concerns or suggestions, the main reasons for opposing a proposal are then outlined, followed by any other comments. Lastly, each section discusses any significant differences in response themes between the groups.

1.15 Where appropriate, verbatim comments are included to illustrate points made, or themes. Only quotes provided by those who gave permission for their responses to be made public have been used in the report.

## **2. THE ROAD NETWORK AS AN ASSET**

2.1 This chapter presents responses regarding whether utility companies should contribute to the perceived long term damage that can be caused by road works. It covers questions around whether the period of restriction following resurfacing should be changed, what an appropriate level of inspection is by roads authorities and the fees to be charged for this, and whether the guarantee period for deeper excavations should be increased.

### **Background**

2.2 The value of the Scottish road network has been estimated at more than £38 billion and the importance of keeping it in an appropriate condition has long been recognised. Concerns have been raised at Ministerial level about the damage to roads which utility company work might cause. A literature review carried out on behalf of the Commissioner in 2011 by the consultants URS-Scott Wilson, suggested that a section of NRSWA (New Roads and Street Works Act 1991) could be used to require contributions from utility companies for the damage caused by road works.

2.3 Currently, legislation states that a utility company cannot excavate a road again for one year following resurfacing although it has been agreed through RAUC(S), on a voluntary basis, that this period be increased to 3 years.

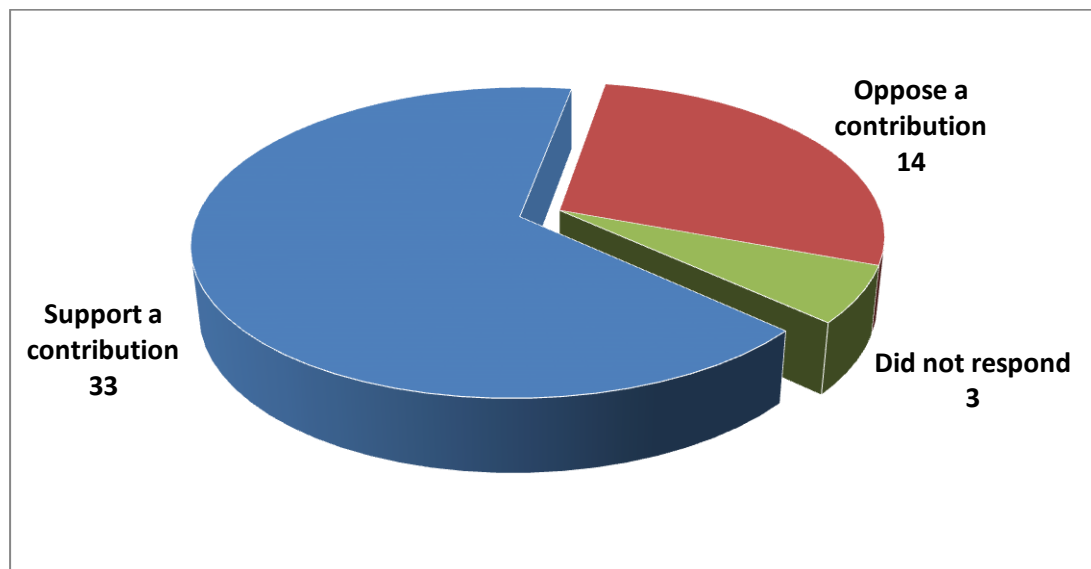
2.4 Regulations allow for roads authorities to charge a fee for inspections on utility company road works. Such inspections can be carried out during the works, within 6 months of reinstatement, and within three months of the end of the guarantee period (two years for standard works and three years for deeper excavations). It has been suggested by some that the percentage of inspections where the roads authority can recover its costs should be increased.



## Findings

### Contributions to costs of making good long term damage

Q.1. What contribution do you consider should be introduced? What are your reasons for coming to this view?



\* All three of those not responding to this question were from group three.

Key themes
1. The level of contribution most commonly suggested amongst those supporting a contribution was 17%, with most citing the 'evidence' as the reason for this level.
2. The implementation of a scheme could prove challenging. A scheme which would be introduced gradually and included incentives would be preferable.
3. Those opposing any contribution felt the proposal was based on poor evidence, and warned of the economic impact of a contribution.

2.5 Of the 33 respondents supporting the proposal, 29 proposed a figure. The levels of contribution suggested varied, as can be seen in Table 2.1. All the group two respondents opposed a contribution, alongside one respondent in group four.

**Table 2.1 Suggested levels of contributions**

Level of contribution	Number
25% or greater	1
17%* or £76 per square metre of carriageway	13
10%** or £45 per square metre of carriageway	6
8.5% or £38 per square metre of carriageway	3
7.5% or less	1
Starting at 5% and rising annually to 10% by 1% per year (5 year plan)	4
5% or £22 per square metre of carriageway	1
<b>Total</b>	<b>29</b>
* One of the 17% refers to the Trunk Road Network only	
** In one case, consideration for a 17% contribution for works on more heavily trafficked roads with a higher design specification.	

2.6 The main reasons given for **supporting a contribution** to the costs of making good long term damage were:

- The evidence – various independent investigations demonstrate that even good reinstatements shorten the design life of a road. The current practice and specification used to excavate and reinstate roads lead to long term damage. It was therefore perceived as reasonable and fair for utility companies to contribute to making good long term damage to roads.
- It would incentivise companies to improve the quality of their works.
- It would be a revenue stream.
- It would encourage behaviour change and innovation to improve work practice.

2.7 The evidence was also the main reason given for supporting a 17% contribution to the costs of making good long term damage, consistent with the TRL report figure of a 17% reduction in the service life of roads.

2.8 Several issues, concerns and warnings were also raised by those supporting a contribution, including:

- A gradual approach would be required to reduce the risk of unintended side effects.

- Further research would be required to establish suitable contribution rates for long term damage caused by excavations in the footway and in the verge (mentioned by five respondents):

*“We are disappointed that the analysis of Contributions to Costs of Making Good Long Term Damage has only considered the impact on carriageways. Damage from works carried out on the footway creates major hazards for vulnerable pedestrians and the consequences of a trip can be severe, particularly for older people. We would strongly argue that such a scheme must be widened to encompass footways, where around 180,000 square metres of reinstatement is undertaken each year.”* (Living Streets Scotland)

- The implementation and supervision of such a scheme may prove challenging.
- There would need to be investigation into the impact on council resources, what financial systems would be required for audit purposes, a charge per surface area/type (frequency of revision), and what management processes would be required to deal with organisations that fail to pay the charge.
- The proposals make no provisions for encouraging good performance/practice.
- Problems with using a standard fee based on the areas of reinstatement obtained from the SRWR. There is currently no statutory requirement for utility companies to enter reinstatement information on completion of works, and so reinstatements are not always entered correctly and the process is open to abuse. There is no fixed penalty for failing to enter the information or any escalation through RAUC(S) for individual cases. Fines for not reporting reinstatement areas need to be greater than Fixed Penalty Notices otherwise there is no deterrent and utility companies would just endure the fines:

*“Until reinstatement details are a statutory requirement or there is some penalty for not entering accurate details on a site by site basis, an automated contribution couldn’t work and would unfairly penalise those organisations who faithfully record accurate details.”* (Stirling Council)

- One respondent reported that while in agreement that utilities’ excavations reduce the life of the roads in which they take place, the proportion of the network affected has not been established with sufficient accuracy and more research is required before it would be appropriate to suggest a figure.

## 2.9 Recommendations made by those **supporting** a contribution to the costs of making good long term damage were:

- Incentives – there was support amongst a number of roads authorities for a measure which would give a discount or remove the charge altogether for utility companies with a high performance rate. This would focus the incentive to get it right first time, produce quality reinstatements and reduce the need to revisit openings:

*“Statutory undertakers regularly exceeding a 90% reinstatement pass rate in the sample regime should pay less than a statutory undertaker regularly performing poorly. Poor*

*performers should pay the maximum 17% per m<sup>2</sup>. This incentive for good performance would ensure reinstatements causing problems are targeted.”* (West Lothian Council)

*“...the potential financial benefits could encourage undertakers to make use of modern innovative methods to reduce the areas affected and the time kept with the road openings to a minimum.”* (Stirling Council)

- The contribution should be made on a cost per square metre basis. This would be a fairer method for utilities to contribute as it is based on the amount of work carried out on the roads.
- One respondent stated that the contribution should include the lateral zone of influence around the reinstated area, which includes damage to the reinstatement surround. Given that utility reinstatements are generally trench or patch formation, the damage should be tied into the running lane affected.
- One respondent suggested that given a number of openings are minor/limited in scope, the contribution should be restricted to openings greater than 2m<sup>2</sup> (previously the threshold considered as defining minor works).

2.10 A lower contribution or a contribution on a rising scale was also suggested as this would enable the utility companies to adapt to a contribution scheme.

2.11 Group two respondents represented 13 of the 14 who **opposed a contribution**. Eleven of these stated explicitly that no contribution should be introduced. The main reasons given for opposing a contribution to the costs of making good long term damage were:

- Distrust of the evidence – nearly all respondents opposing a contribution had reservations about the evidence, questioning the validity of the URS Scott Wilson and TRL reports which were used as the basis for some of the proposals in the consultation. The URS Scott Wilson report was not considered to have presented any new evidence or conclusions. Many respondents also felt that some of the reports reviewed in the URS Scott Wilson Report and specifically the evidence on long-term damage were fundamentally flawed:

*“NJUG ... does not feel that assumptions can be made on the impact of utility reinstatements on Scottish roads based on the existing evidence, and does not accept many of the findings laid out in the URS Scott Wilson report. In particular, the TRL PPR386 Report made recommendations on long-term damage based on a sample of only 38 sites across the UK, which NJUG robustly challenged at the time, and continues to challenge. NJUG seeks greater clarity and understanding of all the reasons for road degradation, and would welcome sight of the data used by the Scottish Government in devising its proposals.”* (NJUG)

- The Impact on Consumers – the introduction of a utility contribution to long term damage would have a ‘direct and unavoidable’ impact on consumer costs:

*“Enacting Section 137 of NRSWA would add to the costs of service for Vodafone customers by approximately 90-100% uplift in civils’ costs. Our network is funded by Vodafone itself and therefore assessing the costs of improving its ability to serve and give the right service and connectivity will be more of a challenge in future years and may contradict with Scottish Government’s aim of economic growth.”* (Vodafone)

2.12 NJUG also commented on Scottish Water and the impact on consumers. A considerable portion of works on Scottish roads are completed by Scottish Water and, therefore, any charge incurred by Scottish Water would ultimately be a cost incurred by the Scottish taxpayer, given that Scottish Water is a statutory corporation and accountable to the public through the Scottish Government, rather than a privatised utility.

2.13 Other issues included:

- Impact on utilities' capital investment programmes – the introduction of a long term damage contribution will negatively impact on measures to drive economic growth.
- The need to consider other reasons for the state of the roads – multiple reasons for the poor state of Scotland's roads and all factors impacting the degradation of roads should be considered. NJUG called on the Scottish Government to undertake a full investigation into all the reasons for road degradation, similar to the Highways Maintenance Efficiency Programme.
- The main issue regarding the condition of Scottish roads is the continued lack of investment in roads and particularly in maintenance of the existing road network.
- It would undermine the existing expected performance requirements contained in the RAUC(S) Specification for the Reinstatement of Openings in Roads (SROR).
- Long term damage contributions could put the quality of the reinstatement at risk:

*"...Undertakers would be paying per metre of trench rather than for quality reinstatement as there would be less incentive to build in quality, so in essence the action to raise a charge may have the reverse result." (Vodafone)*

2.14 Recommendations made by those **opposing** the proposal included:

- Any introduction of a levy for damage to roads from reinstatements should not be considered in isolation from the other costs associated with maintaining roads:

*"In particular we note that while road drainage is a road works authority responsibility in most built up areas, the majority of road drainage flows are conveyed and treated by Scottish Water – a service that Scottish Water does not charge road works authorities for. In 2008, the Scottish Government estimated that the costs of providing this service were £100m a year. Scottish Water's view is that any steps to take a more cost reflective approach for road openings should also encompass the costs of managing roads drainage." (Scottish Water)*

- The best way to reduce the impact of utility and authority works on the long term performance of the road structure may be through innovation in methodology, techniques and materials:

*"The impact of reinstatements on road structure is influenced by many varied factors... The specification used to prescribe the methods of reinstatement required may no longer be fit for purpose given the increased traffic loading and volumes now being experienced in many urban environments... As part of a way forward the specification must be reviewed regularly to consider developments in materials and techniques which may address these changes. It may also be prudent to consider moving away from a 'method specification' and re-write it*

as a 'performance specification'. SGN has already started using this methodology by employing deflectometers to ensure reinstatement compaction is consistent with the surrounding structure." (SGN)

- Continue with voluntary initiatives that have been agreed through RAUC(S) with higher targets each year, which have delivered a real improvement in reinstatement quality, with Improvement Plans in place to deliver further improvements.
- If a contribution to long-term damage is introduced, then a *targeted approach* should be introduced, focusing on those areas that widely deviate from the national average and those utilities whose reinstatement record is not as good as the average.

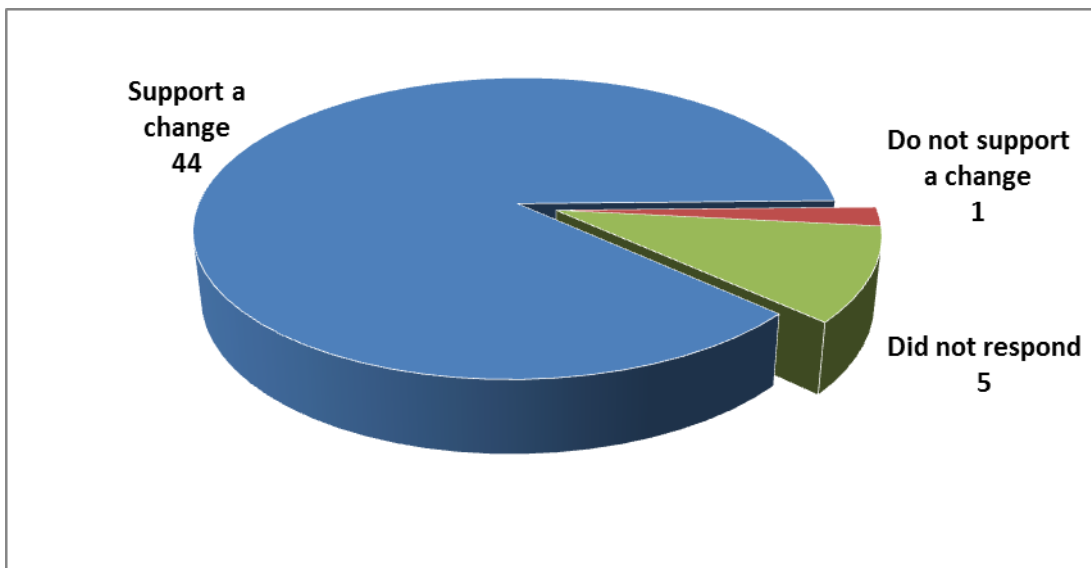
#### Comparison of group responses

2.15 Responses to this question showed a clear split in support for a contribution, and a suggested level, by respondents in group one and opposition to any contribution from group two. However, in both groups one and two, the issue of unintended consequences, in terms of quality, was raised.

2.16 It is also worth mentioning that several of the responses stressed that they appreciated the effect this would have on utility companies, and others stated that any figure would have to be acceptable to both roads authorities and utility companies, whilst also recognising the damage to the network.

#### Road Restrictions

**Q.2. Do you think the period of restriction following resurfacing should be changed? Please can you explain your answer?**



\* Of the five not responding to this question, four were from group three and one was from group one.

2.17 The vast majority of respondents (39), from both groups one and two stated that the period of restriction following resurfacing should be three years and that this should be adopted into

legislation. However, other respondents answered that the period should be five years, with some stating this should be the case for deep excavations or for footway and carriageway.

Key themes
1. There was widespread support for changing the period of restriction after re-surfacing to three years and adopting this into legislation.
2. There was agreement that the voluntary three year restriction period had worked well. Adoption into legislation would remove the current inconsistency between the legislation and the Code of Practice.
3. Group two support was conditional on any new restriction period being subject to certain exemptions.

2.18 The main reasons given for **supporting** an increase in the period of restriction following resurfacing and adoption into legislation were:

- The three year restriction period is presently in operation on a voluntary basis and has worked well in practice.
- It may improve current negative public perceptions of roads being dug up and show that utility companies and councils communicate with each other.
- It may encourage and promote better forward planning of large scale works and lead to a more co-ordinated approach between organisations.
- It would help to protect new surfaces (and any disincentive to excavate a new surface is to be supported).
- Adoption into legislation would remove inconsistency between legislation and the Code of Practice.

2.19 However, many of those supporting an increase in the period of restriction following resurfacing said that their support was dependent on **caveats**, namely:

- Any new restriction period should be subject to certain exemptions – agreed by RAUC(S) – like new service connections, urgent and emergency works.
- A review should consider the exemptions as they could be open to abuse to negate a restriction period.
- Thought should be given to full or half width surface reinstatement so as to be in line with the Design Manual.

2.20 Scottish Water proposed two specific caveats, as follows:

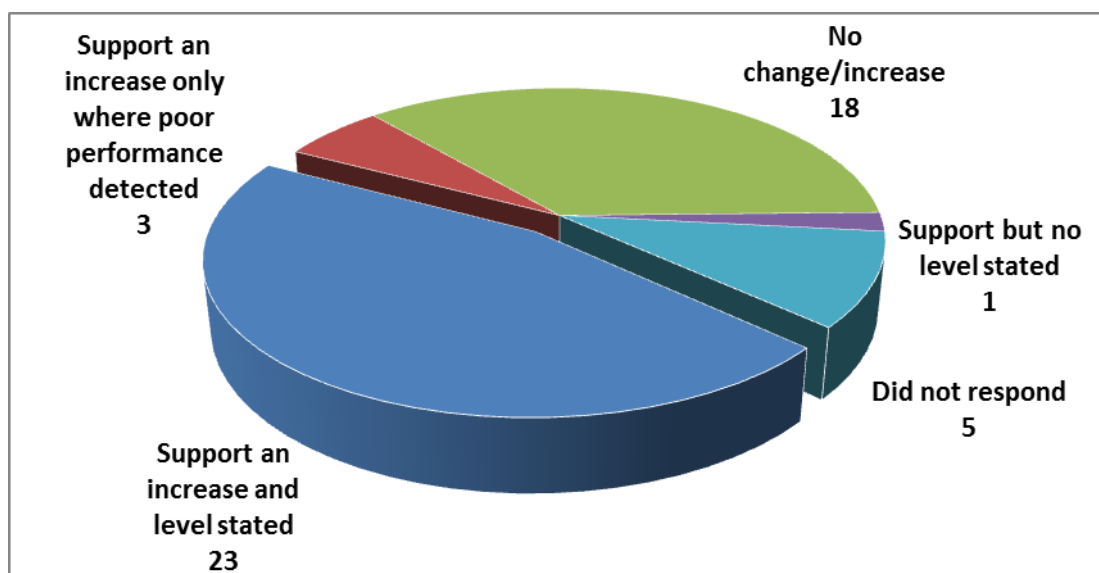
*“... would require that the current exemptions agreed in the Chapter 6 of the Code of Practice for the Co-ordination of Works for Roads, March 2013 should remain in place and that Scottish Water is not prevented from meeting its statutory duties in any way ... Should the three year restriction become a statutory requirement, the advance notice period required prior to substantial works for road purposes should be increased to six months and that early starts should not be applicable to these works. This will ensure that sufficient time is available to all utilities to investigate any apparatus and adequately assess its condition. Where work is identified at this stage, time is also required to plan, fund and complete any required works.” (Scottish Water)*

Comparison of group responses

2.21 There was general consensus across the groups that the period should be changed to three years and adopted into legislation.

Road Works Inspections

**Q.3. What is an appropriate level of inspection for utility company road works where a fee can be charged by the roads authority? Please can you explain your answer?**



\* Of the five who did not respond to this question, four were from group three and one was from group one.

Key themes
1. Amongst those supporting an increase in the level of inspection, Category C inspections were considered most in need of an increase, followed by Category A.
2. The majority of group one respondents felt that increased inspections would improve the quality of reinstatements.
3. Group two respondents saw any increase in inspections as unnecessary, and around half supported a reduction in inspections, for high performing utility companies.



2.22 Amongst those supporting an increase in inspection levels, the proposed levels varied. Some respondents referred to only one of the categories of inspections, whilst others referred to two or all three. Around half of those supporting an increase in levels of inspection noted that 10% of inspections during the works is insufficient:

- Various increases in levels of **Category A** inspections were suggested, with the majority of respondents suggesting an increase from 10 to 30%.
- **Category B** inspections were much more likely to be considered satisfactory and not in need of change, compared to A and C inspections. Two respondents noted that Category B inspections could be removed altogether if Category C inspections were increased to 100%.
- Thirteen of those supporting a rise in levels expressed that the **Category C** inspections (those carried out within three months of the end of the guarantee period) were the most important, and 11 respondents supported an increase in the percentage of sample C inspections from 10% to 100%.

2.23 The main reasons given for **supporting** an increase in the level of inspection for utility company road works where a fee can be charged by the roads authority were:

- There is an unacceptable level of reinstatements being passed on to the roads authorities in a defective state.
- Increased inspections would focus utility companies on the impact of their works and lead to improved compliance with codes of practice and the reinstatement specification.
- This would be in line with that applicable under the road construction consent legislation, whereby a developer is required to pay the cost of an inspection prior to adoption of maintenance responsibility by the roads authority.

2.24 Other points made by those **supporting** an increase in the level of inspection for utility company road works where a fee can be charged by the roads authority were:

- Inspections should be carried out by the utilities' own inspectors and they should, through supervision and monitoring, be responsible for ensuring better performance from their contractors and sub-contractors.
- One roads authority mentioned sample size issues – that there has been a steady and significant decline in the amount of agreed chargeable inspections for what is a similar scale of works per year, due wholly to the change in the way inspection units are calculated.

*“The methodology of calculating the number of inspection units requires to be reviewed to better reflect a true sample size.”* (Stirling Council)

2.25 Amongst those **opposing any increase** in inspection levels, nearly all of the group two responses included some, if not all of the reasons outlined in the NJUG response. The main reasons

given for opposing any increase in the level of inspection for utility company road works where a fee can be charged by the roads were:

- The current 30% inspection level is a high sample and gives an extremely strong indication of the quality of utility companies' works and performance:

*"Scottish Power believe that the existing level of 30% is an acceptable sample size of works undertaken which provides a good indication against overall performance. There is no evidence to justify the rationale behind an increase so the level should remain at 30%."*  
(Scottish Power Energy Networks)

- Roads authorities already have the ability to inspect all parts of road works if they feel it necessary (but can only charge for those detailed), through The Inspections Code of Practice (which was agreed by RAUC (Scotland)) and Advice Note 4. (NJUG state these proposals ignore this fact).
- Effective voluntary measures are already in place and accepted by the RAUC(S) community.
- Regional variations would be better tackled through a more focused and targeted approach tailored to the needs of each individual case.
- Around half of those opposing an increase in inspections echoed NJUG in supporting a reduction in inspections for high performing utilities:

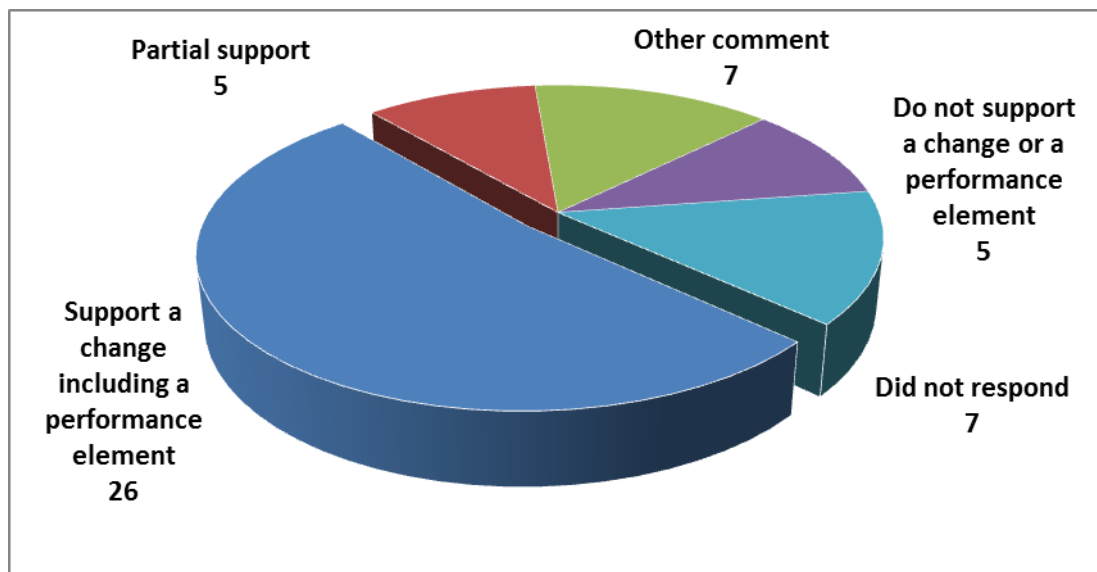
*"Current practice should be improved such that where any inspections are chargeable, evidence should be provided in all cases that a physical inspection of the site has taken place, i.e. photos and site report. This should prevent inspections being recorded where it is clear from systems that remedial works have not been carried out and it is unclear that a further site inspection has been carried out by the road works authority."* (Scottish Water)

#### Comparison of group responses

2.26 Responses to this question were broadly divided between support for increasing various types of inspection levels amongst roads authority respondents and opposition to any increase amongst utility companies. Twenty two of the twenty three respondents supporting some increase in levels of inspection for utility company road works where a fee can be charged by the roads authority were from group one and the other was from group three. Of the 18 respondents stating that they perceived the current level for inspection was appropriate, and that no change was required, four were from group one, 13 from group two and one was from group four.

## Road Works Inspections

**Q.4. Should the arrangements for inspection fees be changed, and could this include a performance element?**



\* Of the seven who did not respond to this question, five were from group three and two were from group one.

Key themes
1. There was broad support across the groups for a change in inspection fees, where a utility company is performing poorly, including a performance element.
2. Over half of group two respondents supported this proposal, but stated that additional regulation was unnecessary.

2.27 Amongst those **supporting a change in the arrangements for inspection fees**, including a performance element, several included some caveats to their support. Many of those in group two followed NJUG's position that "*additional regulation is unnecessary*", particularly, they argued, when voluntary measures already in place were proving effective. However, a change to the existing regulation, with inspection fees being changed to incorporate a targeted approach, with a reduction in the number of inspections and fees for high performers, but with additional inspections for those identified as poor performers, could deliver even greater improvements, further incentivising good performance:

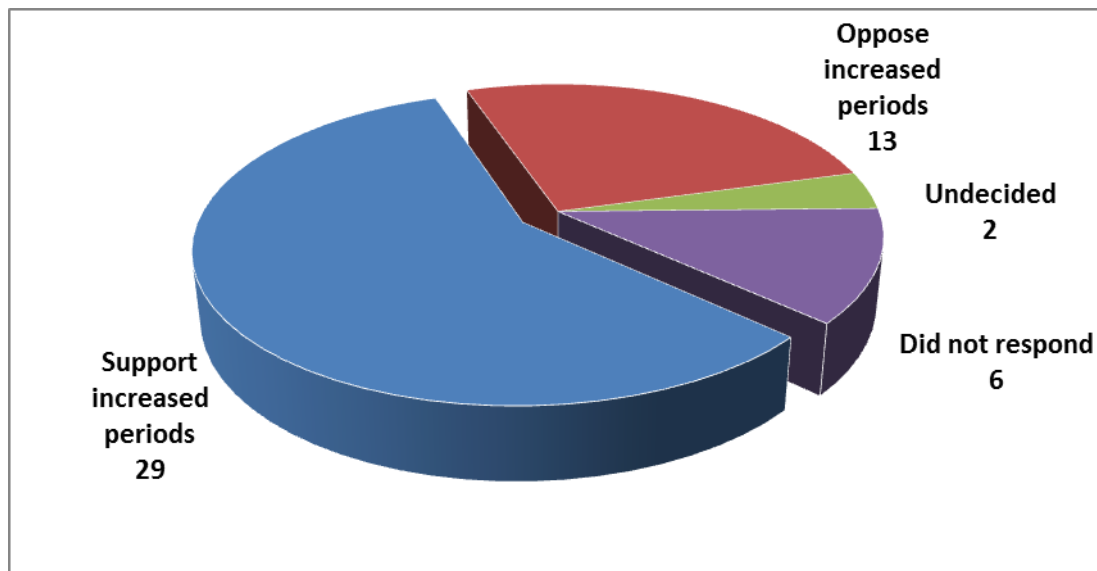
*"It would seem more than reasonable that those that pay most are those who fail to comply. A targeted inspection regime on failing utilities could be a faster mechanism to achieve a higher standard of reinstatements on our roads. Yes, we think it should be changed and include a performance element."* (Shetland Islands Council)

### Comparison of group responses

2.28 There was general consensus across groups with 26 respondents agreeing that inspection fees should be changed and include a performance element (eight from group two, and 18 from group one).

### Guarantee Periods

**Q.5. Do you agree that such increased periods be introduced? What are your reasons for coming to this view?**



\* Of the six not responding to this question, five were from group three and one was from group one.

Key themes
1. There was a perception that increased guarantee periods would drive up standards and lead to better quality and more durable reinstatements.
2. There was concern that there was not sufficient evidence to demonstrate that reinstatements that have not failed after two or three years would go on to fail after five years.
3. An improved records system was seen as being required to ensure correct identification after long periods.

2.29 The current guarantee period after utility company works are completed is two years, and three years for deeper excavations. Given that road reinstatements are expected to have a service life of 20 years or more, it was proposed that the guarantee periods could be increased from two years and three years up to five years and six years for deeper excavations.

2.30 Among those who supported these proposals, the main reasons for **agreeing** that such increased periods be introduced were:

- That the current guarantee periods are inadequate.

- Evidence shows that a large number of reinstatements fail outwith the guarantee period but within the residual life of the carriageway, thus requiring public money to be used to carry out often significant repairs.
- Having extended guarantee periods will drive up standards amongst utilities and contractors and help focus on ensuring quality and durable reinstatements.

#### 2.31 Caveats to support amongst those endorsing increased periods, and other issues raised included:

- Steps need to be taken to improve records sufficiently to permit identification after these long periods:
 

*“A longer guarantee period should encourage better backfill and higher quality but there are practical difficulties in identifying reinstatements after a long period, particularly in the busiest urban areas where there are numerous excavations. In order to enforce longer guarantee periods, consideration should be given to mandatory permanent on-site marking of reinstatements so that there can be no doubt as to who is responsible for a particular reinstatement, years after the event.”* (Highland Council)
- There is limited evidence that many reinstatements fail during the three years following the end of the current guarantee period. This was also the argument put forward by the majority of group two respondents.

#### 2.32 The main reasons for **opposing** the introduction of increased periods were:

- A lack of evidence, i.e. no evidence has been provided that suggests that any reinstatement that has not failed after two or three years is likely to fail after five years or beyond.
- Transport Scotland’s inspection policy requires that inspections are carried out on a bi-annual basis and they have stated that the majority of structural work defects will manifest themselves within the first two years of the work being undertaken.
- Commercial and financial impacts – any increase in the guarantee period will lead to increased contractor prices and consumer prices going up:

*“There is no empirical evidence to suggest that a trench reinstatement which has not failed after either 2 or 3 years is likely to fail thereafter. Transport Scotland’s own inspections regime is bi-annual and they have stated that the majority of structural defects will manifest themselves within the first two years of the work being completed. This emulates the findings from the research undertaken across the UK... consideration should also be given to the commercial and financial impact this would have on both utilities and contractors. Extending the guarantee period could increase contractual rates as liability for works could extend beyond contractual terms.”* (Energy Networks Association)

- Liability and accountability – the extra duration of the guarantee period would lead to disputes on the history and ownership of reinstatement failure.

2.33 Scottish Water proposed that there was a misunderstanding of the cause of failure and types of defects:

*“Scottish Water believes that there is a misunderstanding of the cause of failure and types of defects. Defects can be either performance defects or latent defects. Latent defects being where the reinstatement has not been completed in accordance with the Specification for the Reinstatement of Openings in Roads (SROR) in force at the time the reinstatement was completed and performance defects being related to the performance of the materials used in completion of the reinstatement.*

*If a defect is a performance defect there is an element of usage and wear and tear in the cause of these defects. Extending the guarantee period would require that products such as surface marking materials are required to last for the whole guarantee period. However, these products themselves have guarantee periods of two years.*

*If defects reported are latent defects, where the reinstatement has not been carried out in accordance with the SROR in place at that time, the guarantee period is deemed never to have started. As such, there is no requirement to increase the guarantee period to ensure that these defects are repaired.” (Scottish Water)*

#### Comparison of group responses

2.34 Responses to this question showed a clear split between groups, with 29 responses agreeing that such increased periods be introduced (27 of whom were from group one) 13 disagreeing (all from group two) and two respondents undecided (both from group one).

### **Summary of ‘The Road Network As An Asset’**

2.35 As might be expected, the questions on contributions to costs of making good long term damage, inspection levels and increasing guarantee periods showed a dichotomy in opinion between groups one and two. There was a good response to question one, with only three respondents not answering this question. There was more variation in responses in favour to the proposal than against, with the latter tending to follow the official response from NJUG with a few exceptions.

2.36 Question one showed a clear split between those in favour (all group one and some group three) and those opposing the introduction of contributions to the costs of making good long term damage to roads, who included all group two and one from group one. Group two respondents questioned the validity and robustness of the evidence used to underpin the proposal, and they raised the issue of the effect on consumers, on the economy and capital investment programmes amongst other reasons. Group one respondents, in contrast, pointed to the evidence as demonstrating what has long been felt by roads authorities, that the roads service life is being reduced by the actions of third parties, and so it is reasonable to expect these third parties to make a contribution to the upkeep of the opening and the area surrounding their reinstatement.

2.37 The responses to question two showed overwhelming support for the introduction of a three year restriction following road surfacing being brought into legislation. The main reasons for this were around public perceptions, the three year voluntary period already having worked well, encouraging better co-ordination and planning of major works and preserving new surfaces for

longer. A number of caveats were given to supporting this, however, most of which focused on exemptions.

2.38 Question three showed a clear split, with support for increasing various types of inspection level amongst group one and opposition to any increase from group two. Those supporting an increase considered Category C inspections as most in need of an increase, followed by Category A.

2.39 There was greater consensus to question four, with more respondents across the groups agreeing that inspection fees should be changed and include a performance element. However, many group two respondents supporting this proposal stated that additional regulation is unnecessary.

2.40 Lastly, question five showed a split in group responses, with group one in favour of increasing guarantee periods and group two against. Those in favour of this proposal stated that it would drive up standards, lead to better quality reinstatements, and that evidence shows that a large number of reinstatements fail out with the guarantee period, which is therefore inadequate. Group two however, challenged this argument and stated that no evidence has been produced to show that reinstatements go on to fail outwith the guarantee period. It was also argued that this would have a financial and commercial impact.

### **3. TIME TAKEN TO COMPLETE WORKS**

3.1 This chapter reports on the time taken to complete road works. It outlines three different proposals, each designed to minimise the duration of road works and summarises views expressed in relation to each.

#### **Background**

3.2 NRSWA allows utility companies free access to roads to place or maintain/repair pipes and cables. The Act stipulates that these works must be completed with such dispatch as is reasonably practical. Where this is not the case, a fine of up to £5,000 may be levied on summary conviction. Roads authorities may also issue a formal notice for works to be completed under a specified timescale, however, this is rare with only 111 notices having been issued across 67,000 utility company excavations in the specific period mentioned in the consultation document.

3.3 Three possible initiatives which may ensure that road works are completed within reasonable periods were outlined in the consultation, and views were sought.

3.4 Firstly, charging where occupation of the road by the utility company exceeds what is deemed reasonable was proposed. In England, where regulations are enacted, this can result in charges of between £250 and £10,000 per day depending on how long the occupation has been, and how traffic sensitive the road is.

3.5 Secondly, fees for a permit to undertake works and also for a breach of permit conditions, or working without a permit i.e. a 'permit scheme' was set out. Although not currently in place in Scotland, views were welcomed on its introduction.

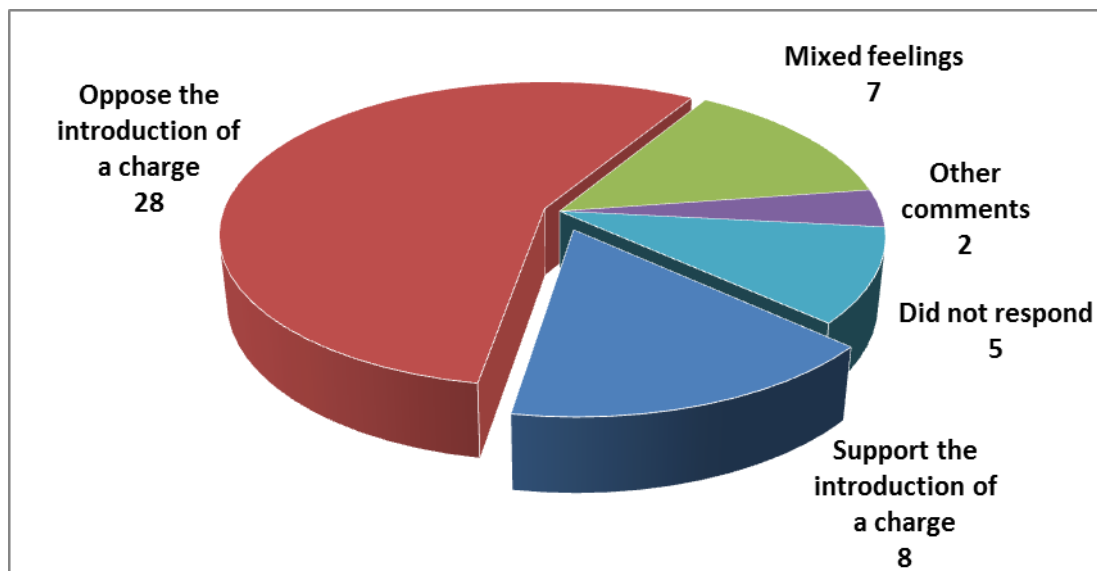
3.6 Thirdly, proposals for 'lane rental schemes' which have been trialled in England were raised. The schemes require utility companies to pay a charge for the duration of their works, with charges variable by the time of the works, with lower rates for off-peak or night time working, and less critical parts of the road networks. Again, views were sought.



## Findings

### Charge for Occupation Where Work is Unreasonably Prolonged

Q.6. Scottish Ministers would welcome views on the introduction of a charge for occupation where work is unreasonably prolonged.



\* Of the five who did not respond to this question, four were from group three and one was from group one.

Key themes
1. Most viewed that charging is not necessary and that most delays are genuine.
2. It was perceived that it would be difficult for roads authorities to question or judge the legitimacy of duration of works.
3. Introduction of charging would become an administrative burden for roads authorities and utility companies.

3.7 Eight respondents **supported** this proposal (all from group one), and it was noted that, in England and Wales, this has focused the utilities in reducing works durations and is an opportunity to reduce the time that roads are occupied and road users are disrupted. Much of the support that was offered, however, was caveated and comments included that:

- A sliding scale of charges related to the road hierarchy and traffic sensitivity would be required.
- Charges should only be introduced if works have been extended without agreement or discussion with the road authority.
- Clear criteria would be required for when this could be imposed and when exceptions could be granted.

3.8 Respondents would only support charging if such a scheme could be developed with a 'light touch' administratively or if costs of running the scheme would be met by the charge, it seems.

3.9 Respondents who expressed **mixed feelings** with regards to the proposal all came from group one. While they saw merit in the approach, the following misgivings were expressed:

- It is difficult for roads authorities to question situations where programmed utility company works are unreasonably prolonged. There may be operational issues which prohibit works being completed and where the roads authorities staff are not qualified to determine the legitimacy of the duration of the works.
- Delays are usually genuine, e.g. adverse weather, unforeseen circumstances or limited flexibility of smaller workforces (in rural areas). If a charge is to be levied, then there needs to be adequate provision to make allowance for genuine delays to be excluded from charges.

3.10 Over half of respondents (28) **opposed** the introduction of an occupation charge, the main reasons being that:

- Unreasonable occupation is a limited problem, so there is no justification or value in a charge.
- There is no evidence to support the need for a charge – NJUG and others in group two recommended that further analysis be undertaken and that RAUC(S) works with the Scottish Road Works Commissioner to identify further ways of reducing the duration of works that do not involve regulation.
- In Scotland, roads authorities and utility companies currently work well to co-ordinate their work to ensure they are not unreasonably prolonged. This provision could undermine these relationships.
- Roads authorities do not have the specific technical expertise to question utility companies on the duration of their works.
- Utility companies are already incentivised either through their regulatory settlements or customer demand/competition to work efficiently:

*“Vodafone and all other undertakers do not want to be on roads longer than necessary to maintain apparatus or to serve new customers. On the contrary, the more time spent on the road costs our business. We work with roads authorities where necessary to optimise notice periods to reduce duration along with providing quality reinstatements. On occasion, we have to work outside normal working hours, to fit in with traffic management requirements, avoid events, other conflicts and other aspects of environment issues which shows a willingness to adapt for the good of the community.” (Vodafone UK)*

3.11 Those in group two were most likely to stress that no consideration had been made in the proposals to the administrative burden that would be placed on the roads authorities or utility companies if the legislation were to be introduced:

*“This is could be difficult as the administration of such a scheme could outweigh the benefits.” (Scottish Borders Council)*

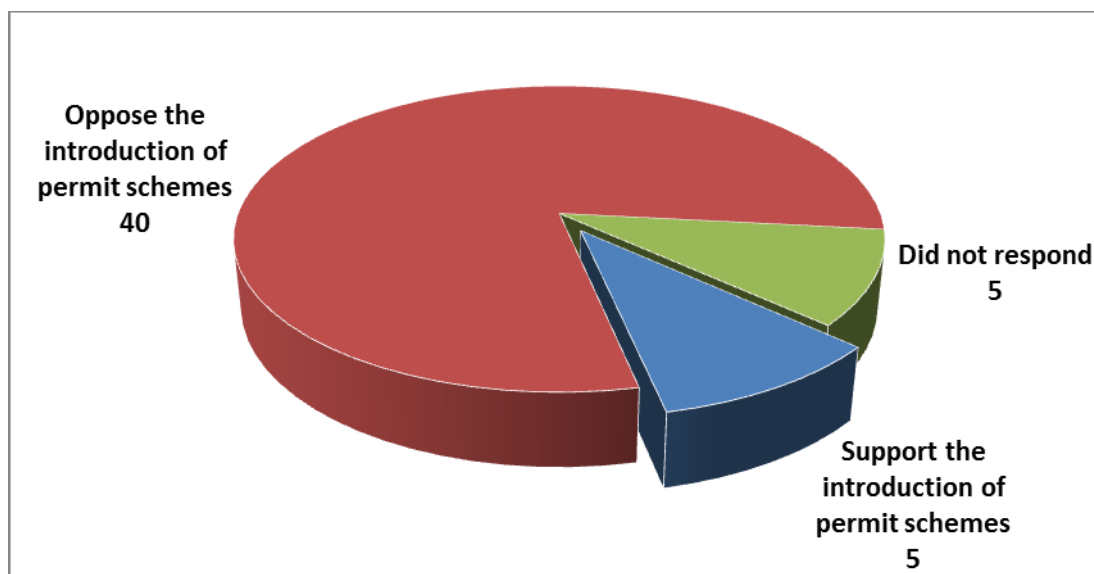
3.12 The main suggestion made in place of a charge was the possible extension of the provisions relating to Section 125 notices to allow issuing of a penalty against a utility company with a consistently poor performance in completing works and to encourage companies to ensure any sub-contractors operate timeously and efficiently. This could be achieved within existing legislation with minimal additional administrative costs, it was suggested.

Comparison of group responses

3.13 Of the 28 respondents who opposed the introduction of a charge, 13 were from group two, 13 were from group one, one was from group four and one was from group three. All of group two respondents opposed the introduction of a charge for occupation where work is unreasonably prolonged. Although 13 group one respondents opposed this proposal, eight supported the proposal and seven had mixed feelings.

Permit Schemes

**Q.7. Scottish Ministers would welcome views on the introduction of permit schemes.**



\* Of the five who did not respond to this question, four were from group three and one was from group one.

Key themes
1. The introduction of permit schemes was seen as unnecessary since respondents considered that the current arrangements for coordinating works using the Scottish Road Works Register, along with the existing provisions available to roads authorities, work well
2. Permit schemes would increase administrative costs and bureaucracy, it was perceived.
3. Costs would be passed on to consumers.

3.14 The responses to this question were overwhelmingly not supportive of the introduction of permit schemes. Forty respondents, from across the groups, rejected this proposal. The main reasons for **opposing** the proposal were:

- The current method for co-ordinating works, and the existing suite of penalties and provisions, when properly used, operates well and there is no benefit in replacing a system that works well:

*“NJUG believes that the existing NRSWA 1991 noticing provisions in Scotland coupled with the cohesive and constructive approach to undertaking road works co-ordinated through RAUC (Scotland) provide sufficient powers and co-operation to manage both roads authority and utility works.” (NJUG)*

- Considerable additional administrative costs to roads authorities and utility companies may result. This was mentioned in almost all of the responses opposing the introduction of permit schemes, across the groups.
- There is limited/no evidence that permit schemes work; in particular, a lack of evidence to show that permit schemes in England have contributed significantly to a reduction in disruption caused by highway works:

*“Is it hard to see the logic of setting up a small industry of administrators to send and receive, view and refuse or grant Permits Applications, with no real evidence this adds value and supports economic growth.” (Vodafone UK)*

- Costs would be passed on to consumers (a theme recurrent in responses provided by utility companies).

3.15 Only five respondents supported the introduction of permit schemes (four from group one, and one from group three), but three of these noted that it could be a financial burden on smaller authorities, and that any support would be dependent on the introduction of a manageable system to reduce administration and financial costs. Other reasons for supporting the introduction of permit schemes were; to allow local authorities to have better control over work carried out on the road network, and to reduce disruption by road works.

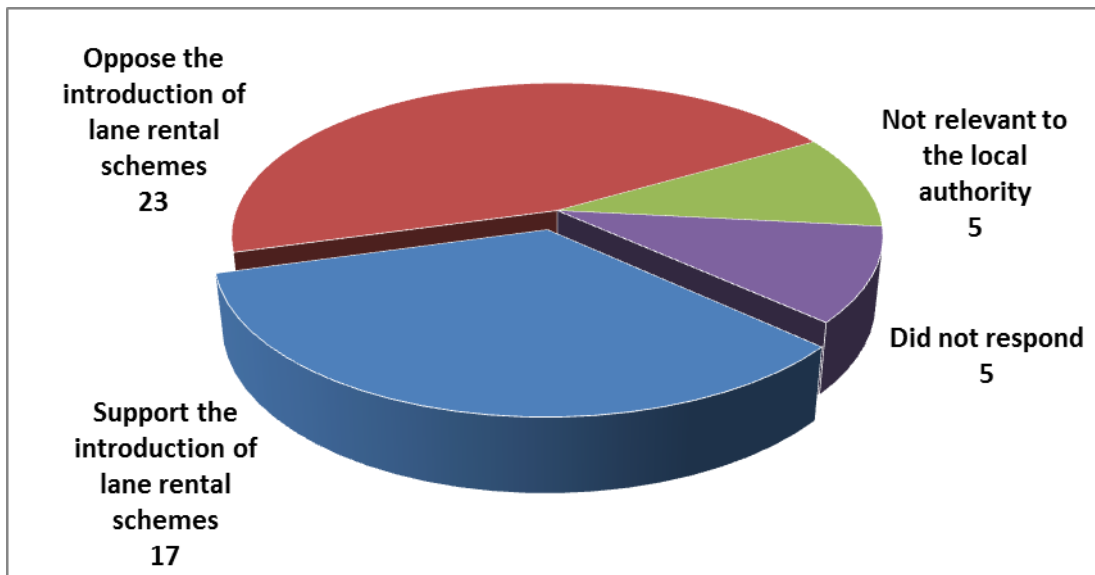
3.16 Lastly, Scottish Water stressed their concern that a permit system might impact on its legal rights and obligations to perform its statutory duties, which could affect the operation of the public water supply and sewerage networks, cause inconvenience to the public and have serious consequences for public health.

#### Comparison of group responses

3.17 There was almost unanimous feeling against the introduction of permit schemes between groups. Of the five in support of permit schemes, four were from roads authorities.

## Lane Rental Schemes

### Q.8. Scottish Ministers would welcome views on the introduction of lane rental schemes.



\* Of the five who did not respond to this question, four were from group three and one was from group one.

Key themes
1. The majority of respondents viewed lane rental schemes as unnecessary and lacking in evidence to support them.
2. Among a minority, there was some strong support for lane rental schemes, but other support was more muted, e.g. on manageable administrative systems.
3. Further research and evidence is required on lane rental schemes to demonstrate that there is a clear cost/benefit, it was suggested.

3.18 Most of those in support of the introduction of lane rental schemes stressed that these would be particularly suitable if targeted on the most heavily trafficked routes and the trunk road network. Only one response, strongly in favour of lane rental schemes, stressed that these should not be confined to traffic sensitive areas under the strict definition of the Act but should apply at least to all strategic roads.

3.19 The main reasons for **supporting** the introduction of lane rental schemes included:

- It would encourage and incentivise shorter works durations and allow local authorities to raise revenues.
- It would be particularly useful for major city centres, traffic critical routes and the trunk road network (although, as above, one participant argued that it should not be confined to traffic sensitive areas).

- It would lead to a decrease in serious and severe disruption associated with road works:
 

*“... the correct use of such a scheme would focus utilities work durations to provide the roads authority with more accurate timescales for carrying out work. This would be essential for the proper co-ordination of road works in a major city, where traffic congestion is a great concern.”* (City of Edinburgh Council)

3.20 Specific **caveats or reservations** that were raised included:

- The need for a manageable system to reduce administrative and financial costs.
- For schemes to be accompanied by an increase in road works inspections, particularly on traffic sensitive roads (to ensure works are not rushed to minimise costs).
- Revenue needs to be reinvested into the road network for the benefit of road users.

3.21 Many of the reasons presented for **opposing** the lane rental scheme were similar to those given for opposing permit schemes. In particular:

- The SRWR works well and current legislation is adequate.
- It would be an administrative burden and there would be considerable additional administrative costs on the road works community as a whole.
- It would increase works durations along with the environmental concerns associated with out of hours working.
- It would lead to increased consumer costs.
- Could impact negatively on health and safety in respect of out of hours working.
- Could lead to a proliferation of urgent utility company works being proposed, as a way of avoiding the proposed charge, which in turn would create further difficulties in terms of the co-ordination of works.
- There is limited/no evidence to support lane rental schemes and further research and evidence is required to demonstrate that there is a clear cost/benefit:

*“NJUG believes that Scottish Ministers should only consider the introduction of lane rental in Scotland after a full cost-benefit analysis is undertaken on the schemes that are being operated in London (TfL) and Kent, with whom NJUG and utility members are working closely.”* (NJUG)

3.22 Many of the utility companies suggested that, should road works authorities and utilities use the range of existing legislation and regulation and voluntary measures in a more effective and consistent way, this would produce better results than lane rental:

*“SGN’s view is that greater consistency and effectiveness in implementing the existing legislative, regulatory and voluntary measures would deliver the same objectives at much less cost to utilities, roads authorities and their customers.” (SGN)*

3.23 Lastly, the NJUG response and several of the other group two responses included suggestions on what should occur should a lane rental system be introduced. These include, ensuring such a scheme would need to be fair and equitable, targeted and operated on an incentivised and avoidable basis, and be about avoiding disruption, rather than generating revenue.

#### Comparison of group responses

3.24 Those in support were primarily from roads authorities but also included responses from groups three and four. Overall, however, the support was limited.

### **Summary of Time Taken To Complete Works**

3.25 The majority of respondents opposed the introduction of a charge for occupation where work is unreasonably prolonged, with most respondents considering this unnecessary or difficult for a roads authority to judge without the necessary technical expertise. The vast majority of respondents also opposed the introduction of permit schemes, considering this to be unnecessary and to potentially increase administrative costs and bureaucracy. There was more support for lane rental schemes, but the majority of respondents also opposed these. Most of the support for lane rental schemes was from roads authority respondents.

## 4. COMPLIANCE AND ENFORCEMENT

4.1 This chapter presents responses to the five questions that were asked specifically on compliance and enforcement. This was one of the larger sections of the consultation and focused on the scale and process of issuing fixed penalty notices and related issues.

### Background

4.2 NRSWA allows roads authorities to seek prosecution resulting in fines of up to £5,000 where a utility company fails to meet its legislative duties. Offences can be committed for not complying with requirements in relation to safety of the works; timing of placement of notices on the SRWR, works taking longer than necessary; and reinstatements (backfilling the excavation) not meeting the correct specification. Summary offences have been in existence since the introduction of NRSWA and it is seen as reasonable to review them given the considerable time since their introduction.

4.3 The first proposal suggested an extension of the summary offences for which a penalty notice can be issued. Currently, on conviction, fines can be issued for those summary offences. Fixed penalty notices can currently be issued for offences relating to the timing of notices entered on the SRWR only. It was suggested to extend the fixed penalty notice regime to cover existing summary offences relating to unauthorised works, signing, lighting and guarding failures, and non-compliance with the reinstatement specification.

4.4 The second proposal was for further new summary offences to be created, and for these offences to be dischargeable by fixed penalty notices. Four new areas to which fixed penalties could be applied were put forward, these being: misclassification of 'emergency works'; failing to 'notice' actual start notices by the due time; failure to rectify defective reinstatements within a reasonable period; and failure to rectify utility company apparatus within a reasonable period.

4.5 The third and fourth proposals in this section covered the possibility of increasing both the overall value of the fixed penalty notice penalty through, for example, indexing it to an inflation measure. There was also a proposal to increase the maximum level of penalty imposed by the Commissioner to £200,000.

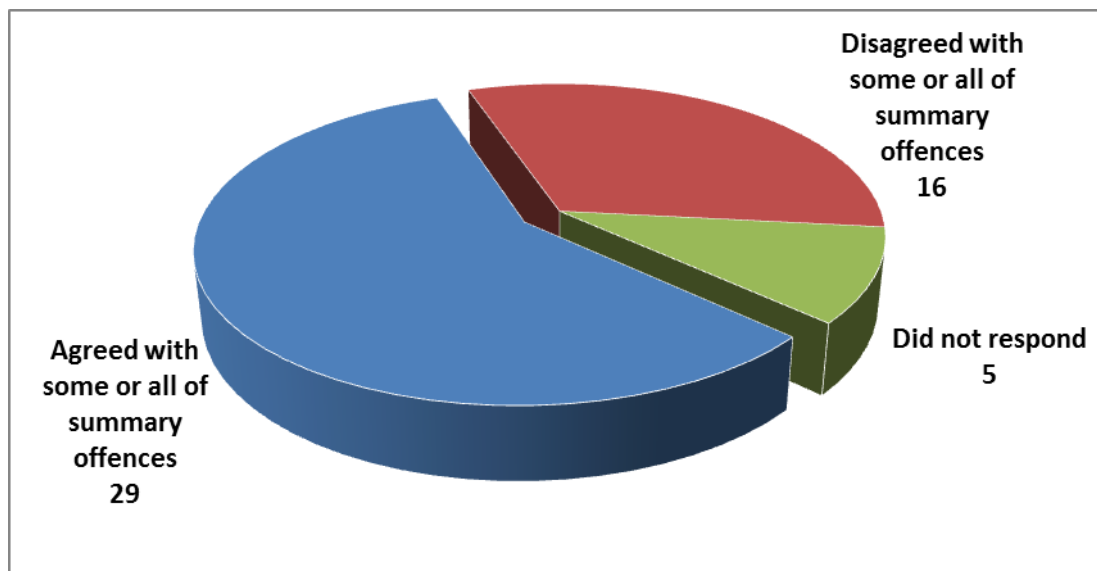
4.6 The fifth proposal was to clarify the technical definition of 'co-ordinate' and 'co-operate' for the purposes of the legislation.



## Findings

### Offences under NRSWA

Q.9. Should there be an extension of existing summary offences dischargeable by fixed penalty notice? Please can you explain your answer?



\*Of the five who did not respond to this question, four were from group three and one was from group one.

Key themes
1. The majority of group one respondents felt that the current system was not working and an extension of existing summary offences dischargeable by fixed penalty notice would be a more efficient method, leading to better quality reinstatements, fewer unauthorised road works and improved performance in signing, lighting and guarding.
2. Group two respondents considered the proposed changes as unnecessary, stating that there are already suitable existing measures that road works authorities can use to address non-compliance.
3. Some roads authorities had concerns about Section 124 of NRSWA and several felt that Section 130 of NRSWA should either not be applied, or else be applied on a case-by-case basis.

4.7 Over half of respondents (29) agreed that there should be an extension to some or all of the three summary offences outlined in the consultation paper. Almost all of those respondents (23) agreed to all three offences being subject to FPNs. The main reasons given for **supporting** an extension of existing summary offences dischargeable by fixed penalty notice were:

- The current system is not effective – the current arrangements for roads authorities to take action to deal with these offences were seen by many as problematic, time consuming and costly to the roads authority (costs which were perceived not to be recovered). These barriers were seen as a deterrent by some to taking action and an ineffective use of the court's time.

- It would be an improved and more efficient method – some respondents considered it to be a simpler and clearer way of managing offences and ensuring that punitive measures were applied. It was also seen that it would encourage better communication and working practice. Some felt that this approach has been successful in improving the timeliness and accuracy of noticing and should improve performance in signing, lighting and guarding and the quality of reinstatement.
- It will improve outcomes – encouraging a positive increase in the quality of the reinstatement works as well as an improvement in the health, safety and wellbeing of workers. Allowing the discharge of other current offences by FPN was seen as a major step forward (particularly in relation to safety).

#### 4.8 Specific reasons for supporting the introduction of each FPN outlined included:

- **Section 110** – would reduce the number of unauthorised works on roads and assist with the co-ordination of works.
- **Section 124** – would encourage defective apparatus to be repaired without delay and improve safety for all road users and operatives. Some roads authorities felt that Section 124 should be used for failing to apply for a permit for traffic signals, rather than cases of blown over barriers<sup>2</sup>:

*“Roads authorities can use a considerable amount of resource in the following up of defective apparatus. To encourage statutory undertakers to repair their apparatus timeously, the introduction of a Fixed Penalty Notice, when defective apparatus is not repaired within the agreed timescales, should be introduced.”* (West Lothian Council)

- **Section 130** – several respondents noted that when the provisions of NRSWA were first introduced, it was agreed by both roads authorities and utility companies that defect inspections should be charged at double the rate for other inspections. Subsequent reviews reduced this to the same rate as other inspections. The introduction of a FPN for not reinstating excavations in accordance with the specification would bring about the original intention as a FPN is roughly double the value of an inspection and therefore incentivise improved performance<sup>3</sup>:

*“Statutory undertakers are not penalised effectively where works are not carried out to specification therefore the ability to issue an FPN under S130 would be welcomed.”* (Clackmannanshire Council.)

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<sup>2</sup> Importantly, five of those in support of an extension to existing summary offences urged caution with Section 124. Whilst recognising that there would be occasions when it would be beneficial for a fixed penalty to be issued by a roads authority for a minor signing, lighting and guarding offence by a utility company, a possible complication is that, through payment, the discharge of criminal liability would prevent subsequent prosecution by the police or the Health and Safety Executive if the offence were to have serious consequences.

<sup>3</sup> Four respondents supporting an extension of existing summary offences stated that Section 130 should be considered on a case by case basis.

4.9 Two roads authorities supported the issuing of FPNs for S110 and S124 summary offences but not for S130. Reasons given were that this would put an additional burden on road works authorities to carry out material testing of utility reinstatements to ensure compliance with the SROR (the feeling being that the duty should be with utilities and not the road works authorities to ensure that their reinstatements comply with the specification and supplemented by the National Coring Exercise). The present system for monitoring and reporting reinstatement failures is considered to be workable and the new proposal may prove difficult to implement in practice:

*“Currently, if a failure is recorded upon inspection then the undertaker is required to undertake remedial works to the reinstatement. This may be viewed as being sufficient penalty without the imposition of an FPN.”* (North Lanarkshire Council)

4.10 Those in group one, both supporting and opposing an extension of existing summary offences, also mentioned administrative costs, noting that penalties should be at a sufficient level to act as a deterrent and be able to cover administrative costs too.

4.11 A number of those supporting an extension stated that the current scope of the fixed penalty scheme leaves a gap in the enforcement regime. While they felt that an extension of the FPN system would help address this, they also felt that a *“comprehensive review of possible extensions would be worthwhile”*. One respondent suggested that there are a number of anomalies and little incentive to improve and that the level and reasons for penalty should be reviewed. Comments also stated that the review could include, for example, other R(S)A offences and the continued failure to repair defective reinstatements.

4.12 Overall, 16 respondents disagreed with some or all of the three summary offences. The main reasons given for **opposing** an extension of existing summary offences dischargeable by fixed penalty notice were:

- No need or value – they are unnecessary and there are existing measures that road works authorities can use to address non-compliance.
- **Section 110** – road works authorities are already able to prosecute utility companies who do not notify them of their works. These failures are currently covered by issuing S113 and/or S114 FPNs for starting works without a notice. As such there is no requirement to extend FPNs specifically for S110 failures.
- **Section 124** – allows roads authorities to prosecute utility companies for signing, lighting and guarding non-compliance. NJUG stated that once the revised Safety Code of Practice is finalised, its launch could provide a catalyst for re-emphasising the importance of correct signing, lighting and guarding through RAUC(S).
- **Section 130** – allows roads authorities to tackle non-compliant reinstatements. RAUC(S) already has a coring programme to deliver year on year improvements in the quality of reinstatement, with higher percentage targets set each year.
- Could devalue the culture in Scotland of working together for the community, and lead to a deterioration in relationships.

- Costs involved – where a reinstatement is not undertaken to specification in the first instance, this is known as a latent defect. Utility companies are required to undertake remedial works to put right such non-compliant reinstatements:

*“To prove a latent defect, a road works authority must produce evidence of wrong doing. The cost associated with this is reimbursable and significant in magnitude, and therefore NJUG does not believe that an FPN is the right mechanism for such an issue.”*  
(NJUG)

- Would increase the regulatory burden on businesses:

*“Adding such an additional burden makes it more difficult in these present times of austerity to maintain a sustainable business that provides local employment.”* (Morrison Utility Services)

- The need for evidence – many of those opposing any extension, stated that an analysis of the costs and benefits of extending FPNs to these offences should be undertaken before any decision can be taken.

4.13 Particular opposition to Section 124 from three respondents was shared by those supporting an extension of existing summary offences. In particular, that the introduction of a FPN could send out the wrong message and have unintended consequences:

*“This is a health and safety issue so utilities should not be permitted to discharge their statutory rights through a single fine. This could encourage the wrong behaviours and impact on site safety.”* (Energy Networks Association)

*“SGN feels that it would be inappropriate to allow a utility to discharge its responsibilities for correct signing, lighting and guarding by paying an FPN.”* (SGN)

4.14 Three roads authorities opposed an extension of existing summary offences dischargeable by FPN. These three authorities do not currently use FPNs because of the costs to administer, and so did not feel that an extension was relevant. They also felt that on the whole, a good working relationship with utilities can normally ensure compliance. However, two of the three said that if inspections were increased, they would see the issuing of FPNs under Section 130 of the Act as a positive option for improving reinstatement quality.

4.15 One group two respondent opposed changes to Sections 124 and 130 but was supportive of introducing FPN for Section 110.

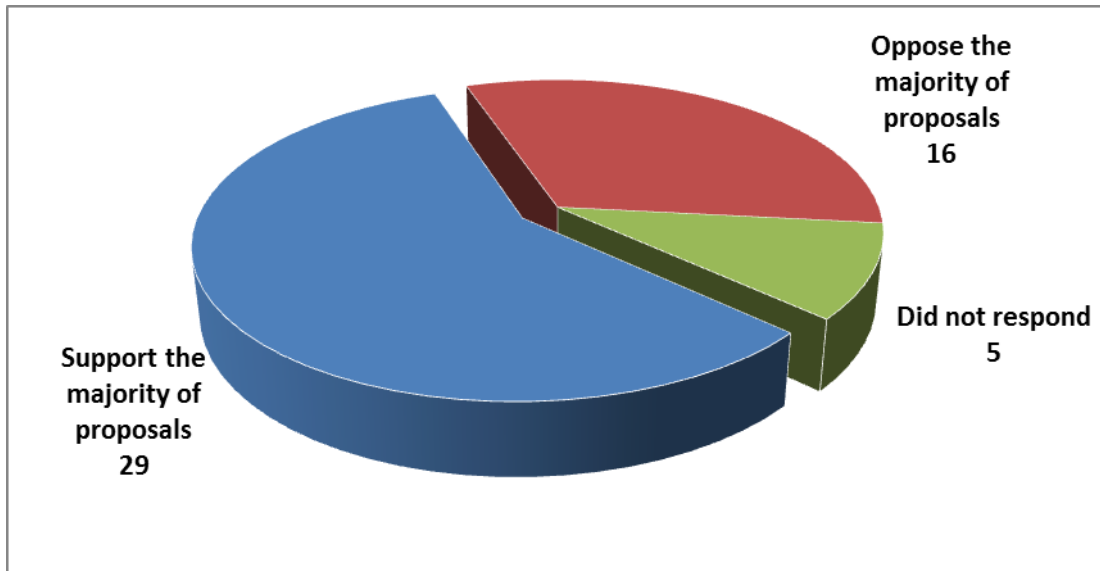
#### Comparison of group responses

4.16 Of the 29 respondents who agreed that there should be an extension to some or all of the three summary offences outlined in the consultation paper, 26 were from group one, two were from group three and one was from group four. All 13 group two respondents disagreed with these

proposals, as well as three from group one. However, the latter group from group one is discussed above.

**New Offences Dischargeable by Fixed Penalties**

**Q.10. Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.**



\* Of the five not responding to this question, four were from group three and one was from group one.

Key themes
1. As with Question 9, the majority of group one respondents felt that roads authorities are currently unable to manage utility company non-compliance within existing legislation and so the proposals were welcomed.
2. Amongst those supporting the proposal, there was most discussion about, and opposition to, the proposal on 'misclassification of works'.
3. Most group two respondents opposed all the proposals except "Not noticing 'actual start' notices by the due time", which the majority had no objection to.

4.17 Twenty nine respondents supported the creation of new summary offences with a view to introducing Fixed Penalty Notices, 16 respondents opposed the proposals and five did not answer this question. Those in support of these proposals felt that roads authorities were currently unable to manage utility company non-compliance with legislation and that proposals could lead to a change in behaviour. This proposal was considered to:

- Improve safety, including the health, safety and wellbeing of workers.

- Improve the quality of reinstatement works (and ensure that reinstatement and apparatus defects are dealt with quickly).
- Improve co-operation and co-ordination (through ensuring accurate information is placed in the SRWR).

4.18 However, of the 29 in support of this proposal, eight supported only some of the proposed new offences, but not others. The table below outlines which ones were supported by these eight and which were not, alongside reasons given for the support or otherwise.

Table 4.1 Suggested levels of contributions

New Offences Dischargeable by FPN	Support	Don't support	Not Sure	Reason(s) given for supporting	Reasons for not supporting	Reasons for being undecided/Caveats
<b>Misclassification of works</b>		6	2		This would already incur a Fixed Penalty under Section 114 so there would be <b>little purpose</b> in creating a new offence. (4)	It may be <b>difficult for roads authorities to prove</b> that utility company works have been deliberately misclassified to circumvent longer noticing period. (3)
<b>Not noticing 'actual start' notices by the due time</b>	7			Making actual start notices a legal requirement <b>would be consistent with comparable existing requirements.</b> (6) A legal endorsement is needed, or else it will continue to operate on a 'best practice' basis rather than a statutory one.		The offence of 'actual start' notices would need more investigation and consideration before becoming an offence.
<b>Failure to rectify a defective reinstatement within a reasonable period</b>	7	1		<b>Stronger enforcement powers</b> would assist roads authorities and encourage consistency – statistics show this is an area where improvement is required. (4) <b>In the public interest</b> for defects to be rectified quickly. (5)		There would need to be <b>clear definitions of the terms 'reasonable period and timescale'</b> for both roads authorities and utility companies. (2)

<p><b>Failure to rectify defective utility company apparatus within a reasonable period</b></p>	<p>7</p>			<p><b>Stronger enforcement powers</b> would assist roads authorities and encourage consistency – statistics show this is an area where improvement is required. (4)</p> <p><b>In the public interest</b> for defects to be rectified quickly. (5)</p>		<p>There would need to be <b>clear definitions of the terms 'reasonable period and timescale'</b> for both roads authorities and utility companies. (2)</p> <p><b>A statutory period for response to a defective apparatus notice should be introduced.</b> This should be monitored as a KPI as well as being subject to an FPN if the timescale was exceeded. (2)</p>
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4.19 A further eight respondents **proposed additional summary offences** that were not on the list proposed in the consultation document. These include FPNs for:

- Failing to provide reinstatement information – the reinstatement information is not always provided by utility companies and this can be seen by roads authorities as essential for co-ordination and location purposes (suggested by three respondents).
- Extensions to notices, without any discussion or agreement with the roads authorities (suggested by four respondents).
- Major works notices starting without any traffic management arrangements being discussed or agreed with the roads authority (suggested by four respondents).
- Failing to respond to direction notices within a reasonable period (suggested by one respondent).
- Remaining on site after a proposed end date has passed (suggested by four respondents):  
*“Closure information is essential for co-ordination purposes. At this time it is required within 24 hours of physically leaving the site. If a notice expires without extension, as no specific offence has occurred, utilities cannot be given an FPN for the period between when the notice expires and the closure information being submitted. Even although an occupation of the road has no valid notice. Remaining on site after a notice expires, should be a specific FPN.”* (West Lothian Council)
- Defective apparatus that fails two 17 day inspections (suggested by one respondent):  
*“The City of Edinburgh Council has a major problem with utilities apparatus that fail and are continually re-inspected without attempts to repair them, especially if designated low risk. The introduction of a new fixed penalty would, therefore, be welcomed.”*  
(The City of Edinburgh Council)
- Failing to reinstate in accordance with the specification or rectify a defective reinstatement or apparatus within a reasonable timescale. These FPNs should also be repeatable if the utility company fails to attend the site within an appropriate period after the first FPN notice (suggested by one respondent).

4.20 Sixteen respondents **opposed** the proposals. The reasons given by the three group one respondents for this were around the administrative burden of issuing FPNs (which they currently do not issue) and the fact that, in the main, they have good working relationships with most utility companies. Nevertheless, one roads authority did support the actual start notice becoming a legal requirement and another supported the issuing of FPNs under Section 130.

4.21 All of the utility companies and related organisations opposed this proposal. The main reasons being that:

- Roads authorities already have regulatory tools under NRSWA:

*“There are various powers and duties currently under NRSWA to curtail misclassification, the abuse of start notices and to rectify reinstatements and apparatus without the need for additional FPNs. The ultimate sanction rests, rightly so, with Commissioner for those poor performers where a roads authority is struggling to see improvement in standards.”*  
(Vodafone UK)

- The role and support of RAUC(S) encourages co-operation, and these changes would devalue the culture of working together for the community that exists in Scotland.
- There is a lack of evidence to support the need for these new summary offences:  
*“In line with regulatory good practice, we would expect to see an analysis of possible options for tackling the issue identified that includes reforming the existing regulatory tools. Only once this has been complete can a view be reached on introducing new summary offences.”*  
(Scottish Water)

#### Not noticing ‘actual start’ notices by the due time

4.21 The overwhelming majority of group two respondents stated they had no objection to the addition of mandatory actual start notices, and that this is currently a legal requirement in England and Wales:

*“SGN feel that issuing an actual start date notice is an important tool for effective co-ordination for road works and as such we would support an additional FPN for failing to do so. However, we would continue to suggest that the cut off for this notice remains at 12:00 the following day, to allow notices to be sent from remote areas”.* (SGN)

#### Misclassification of works

4.22 All but one of the group two respondents felt that this was not a significant issue, and so there would be no value in creating a further offence. Several respondents stated that they would like to see data/evidence to support this proposal:

*“Not a substantial problem and would welcome sight of any data on whether this is a widely adopted approach by works promoters. (If there are individual cases with a particular works promoter, then the individual work promoter and authority should seek to resolve, if necessary, with support from the Commissioner).”* (NJUG)

4.23 One group two respondent did not object in principle to the addition of misclassification of works, but in line with good practice would expect to see an analysis of the costs and benefits of taking this action.

#### Failure to rectify a defective reinstatement within a reasonable period

4.24 All group two responses which referred to this proposal stated that there are already adequate measures under NRSWA to address this:

*“SGN occasionally experiences periods of very high workload due to rapid increases in the number of reported gas escapes, for example, during very cold weather. At these times, our priority will always be to divert available resources to meet these demands and the repair of minor reinstatement defects may be delayed until we can release the necessary resource. We are of the opinion therefore that the issuing of FPNs for failure to repair defective reinstatements within a reasonable period would serve little purpose save to add to the cost and administrative burden associated with FPNs generally. Roads authorities already have measures to which they have recourse, including rectifying the defective reinstatement themselves and charging the utility.” (SGN)*

#### Failure to rectify defective utility company apparatus within a reasonable time

4.25 As above, all group two responses which referred to this proposal stated that roads authorities already have measures to which they have recourse to encourage utility companies to rectify defective apparatus. NJUG stated that any persistent problems can be dealt with by RAUC(S) under the Code of Practice for Inspections. Many group two respondents also pointed out that it is not in a utility companies’ interest to leave its apparatus defective for any length of time:

*“RUAC (Scotland) is currently considering the issue of an Advice Note detailing an agreed process for the management of defective apparatus which will provide a clear guide regarding timescales for repairing defects on utility apparatus to utilities and roads authorities and should preclude the need for additional legislation.” (SGN)*

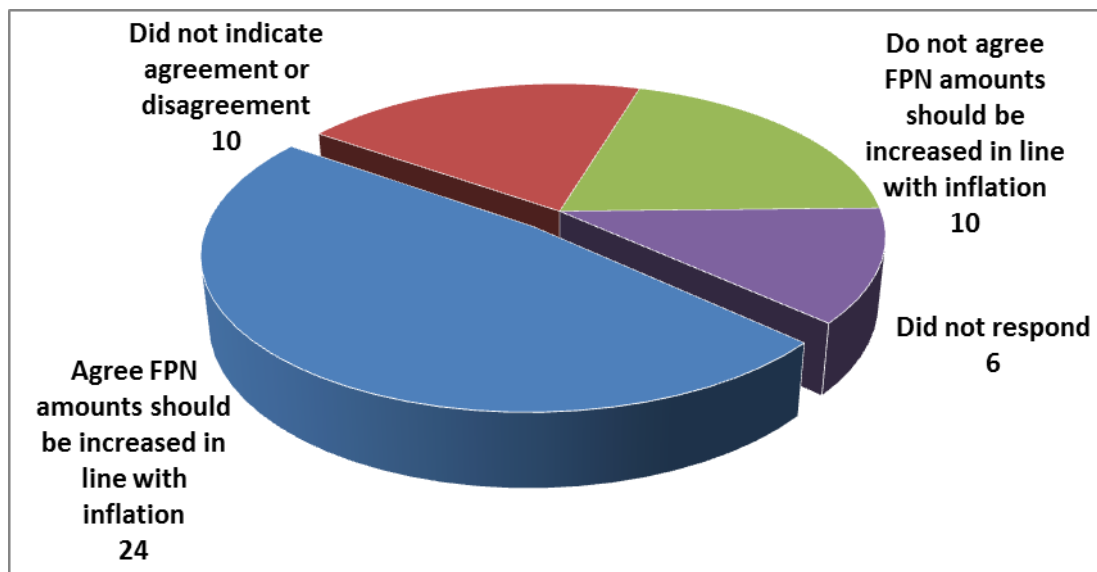
*“...NJUG believes the emphasis should be on road works authorities and utilities communicating with each other and working together to drive up standards, and rectify any quality issues or non-compliances as effectively and quickly as possible.” (NJUG)*

#### Comparison of group responses

4.26 Overall, 29 respondents supported the creation of new summary offences with a view to introducing FPNs and almost all of these were from group one (two were from group three and one was from group four). One third of respondents (16) opposed the proposals and almost all of these were from group two (in addition to three from group one).

## Fixed Penalty Amounts

Q.11. Do you agree that the current fixed penalty notice amounts should be increased in line with inflation e.g. consumer price index?



\*Of the six who did not respond to this question, five were from group three and one was from group one.

Key themes
1. There was support for an increase which, at a minimum, would be in line with inflation. Those in support thought the level of penalty should be sufficient to act as a deterrent, and to recover the costs of administering a scheme.
2. Those opposing any increase suggested felt it was not justified or needed, again stating that there is a lack of evidence to change the amount and that the current penalty level was acting as an effective deterrent to committing offences.
3. An alternative view on the level of increase was that it should be linked to the minimum fine for a summary offence.

4.27 The main reasons for **supporting** the proposal were:

- The level of penalty should be sufficient to act as a deterrent - i.e. should exceed the cost of obtaining the appropriate permit or consent for Roads (Scotland) Act offences:

*“For a penalty to be a sufficient deterrent it needs to be severe to make any sort of impact on a utility undertaker. Possibly 'stepped' fines for persistent offenders could be considered as well as an initial inflationary increase...” (Scottish Borders Council)*

- Amounts should be increased substantially so that the costs of administration should be recovered (at least £250 and be index linked thereafter).

- Fixed Penalty Notices, as for all penalties, should be subject to an annual review and increases to cover inflation and on-going, ever increasing costs.

*“Scottish Water has no issue with the increase in penalty amounts. There should also be a consistent approach relative to the levels of fines in other areas of road management e.g. parking tickets, bus lane offences etc.” (Scottish Water)*

#### 4.28 Alternative views **supporting** the proposal were:

- The amount should be reviewed every five years to ensure that the financial penalty is having the desired effect of improving the performance and quality of work. Given the on-going reductions in local authority funding, where large parts of expenditure are ring-fenced to key government priorities, Ministers need to recognise that many authorities are now reliant on this income to pay for inspectors and officers who carry out this work.
- Fixed Penalty Notice levels should be linked to construction inflation in line with other community costs. They should be rounded up to the nearest £10 to make administration easier. The possibility of different levels of fine for different types of offence should also be considered. For instance, someone who is late with a notice should not be considered as equivalent to someone who works without a notice.
- Other respondents stated that consideration should be given to penalties being set at a level comparable to that of summary offences.

#### 4.29 The main reasons for **opposing** the proposal were:

- There is a lack of evidence on the costs of administering a fixed penalty notice scheme or benefits coming from the imposition of penalties.
- Penalties are already too high.
- NJUG's own performance figures indicate that only 2% of the total number of notices attract a fixed penalty notice. The current level of charges acts as an effective deterrent with a compliance rate of 98%. Therefore, there is no justification for increasing the fixed penalty notice level, as the current level is driving a high level of performance.

#### 4.30 Other views expressed in response to this proposal were:

- Fixed penalty notice levels should be increased to reflect the value of the road as it relates to the travelling public. The penalty level should take into account the lane rental value if these are enacted.
- There should be an increased emphasis on the quality of fixed penalty notice assessment carried out by roads authorities prior to issuing penalties, thereby reducing time wasted *“arguing over spurious penalties”*.

- If a fixed penalty notice is to have the same deterrent effect, it would be logical for the fixed penalty level to be linked to the maximum fine for a summary offence. One respondent suggested that whenever the scale of maximum penalties for summary offences is reviewed, fixed penalty levels should be increased or reduced by a comparable proportion.
- Increases in fixed penalty notice levels need to offset any increased costs of the roads authority in operating the system. If CPI of inflation is the best mechanism for this, then it should be used. However, there may be merit in a system based directly on actual costs.
- It is commonplace for promoters to accept penalties which they then pass on to their contractor. The current level of penalty should therefore be reviewed and a mechanism put in place to allow the levels to be reviewed on a bi-annual basis.
- As fixed penalty notices are a financial deterrent, there is no reason why inflation should decrease that deterrent. The amount of a penalty should be linked to inflation. There should be a rounding up increase to the nearest £5 and there should be no increase of less than £5. If the inflationary increase is less than £5, it should be deferred to the following year, adding both years together. Also, different levels of penalty should be levied for different types of offence.

#### Comparison of group responses

4.31 Just under half of respondents (24) supported the proposal to increase fixed penalty notice levels in line with inflation and, of these, 21 were from group one, two were from group two and one was from group three. Ten respondents – all from group two – opposed the proposal; and 11 respondents offered an alternative view.

#### Commissioner Penalty Limit

**Q.12. What maximum level of penalty do you consider is required to ensure that it can influence the behaviour of utility companies and roads authorities which do not comply with their duties? Should this be increased in line with inflation e.g. consumer price index?**

<b>Key themes</b>
1. Around half of respondents did not state a figure in response to this question. Twenty-one respondents thought the level of penalty should be increased, while 18 thought it should remain at the same level.
2. Many respondents (20) did not answer the part of the question that asked whether this should be increased in line with inflation. Amongst those who did, it was agreed that it should be increased in line with inflation.
3. There was some concern amongst group one respondents about how an increase would impact on roads authorities. It was argued by many that the reputational damage to utility companies is likely to have more impact than increasing the level of penalty.

4.32 Although this question asked respondents to state a figure, only 26 of the 43 responding provided a figure. Those in group two opposed any increase but did not state a figure, so these responses have been categorised as support for the existing £50,000 as the maximum level of penalty. Table 4.2 summarises responses.

Table 4.2 Suggested levels of Penalties

Level of penalty proposed	Number of respondents	Reasons given/ Comments
£200,000	11	<i>"...increasing to £200k would certainly keep the Road Works Community focused on the year on year Improvements sought by the Commissioner."</i> (Argyll and Bute Council)
£100,000	1	None given.
£50,000	18 (13 from group two)	Group two reasons - The existing level of penalty is sufficient to influence the behaviour of utility companies and roads authorities, and there is no evidence provided to support a change:  <i>"Given the high level of utility compliance in terms of timeliness and quality of noticing (98% compliance) NJUG does not believe that any increase in the level of penalty is warranted."</i> (NJUG)
In support of increasing the penalty but no figure given.	9	<i>"The Commissioner should have the power to impose a penalty as considered reasonable in the circumstances of the offence."</i> (North Ayrshire Council)
No figure provided or indication of support/opposition for an increase.	4	

\* Seven respondents did not answer this question. Five were from group three and two were from group one.



4.33 Many of the responses from group one showed a concern for how an increase in penalty would impact on roads authorities. Comments repeated by those in group one, regardless of the level of penalty they proposed, were that there needs to be a link between the size of the organisation and the maximum penalty that can be levied upon them. Another theme that was mentioned, mostly by group one respondents, was that fines should be relevant to the offence. One respondent in group one pointed out that there will be a difference in how these penalties will impact on roads authorities and utility companies:

*“...an increase in the level of fines that could be imposed on a roads authority is possibly inconsistent with the third aim of this consultation, to protect the structure of roads, as fines are likely to be funded from roads maintenance budgets rather than from increased customer charges, in the case of a utility company.” (Dumfries and Galloway Council)*

4.34 A theme that was expressed mostly by respondents in group one, but also by some in group two, was that the reputational damage to utility companies was likely to be greater than the impact of fines.

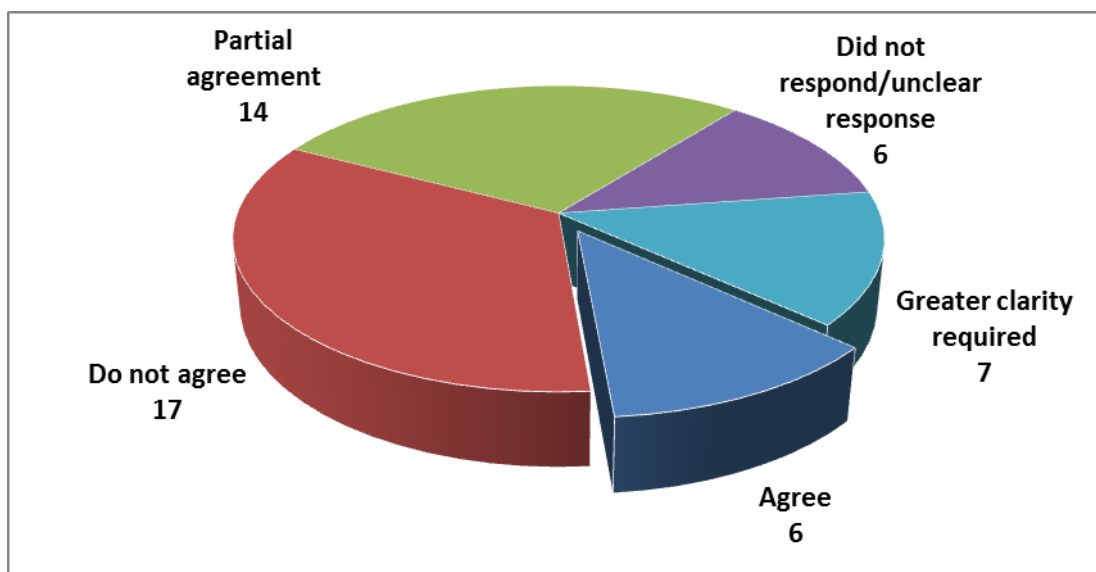
4.35 Just under half of respondents (20) across the groups did not answer the second part of the question, which asked whether the level of penalty suggested should be increased in line with inflation. Eighteen respondents thought that it should (or be ‘reviewed periodically’ – two of this 18). Five respondents stated that it should not be increased in line with inflation.

#### Comparison of group responses

4.36 All respondents in group two opposed an increase in the maximum level of penalty. The majority of group one respondents supported an increase. Those supporting an increase in line with inflation were from groups one and three, and one respondent from group two stated they held no objection to this. All those opposing an increase in line with inflation were from group two.

## Definitions of Co-operate and Co-ordinate

Q.13. Do you agree that the definitions of co-operate and co-ordinate in Sections 118 and 119 be revised as proposed? Please provide the reasons for your view.



\* Five people did not respond. Four were from group three and one was from group one. One respondent provided an unclear response.

Key themes
1. There was considerable opposition from both main groups towards revising legislation to state that penalties could be imposed for failure to comply 'such practice as appears by the Scottish Road Works Commissioner to be desirable'.
2. Many respondents stated that the definitions needed to be clearer and not open to misinterpretation.
3. Those who disagreed with all parts of the proposed revised definitions, stated that the existing definitions of 'co-operate' and 'co-ordinate', if used effectively, are right and appropriate and so amendment was unnecessary.

4.37 The consultation document set out the Commissioner's recommendation that, for clarity, legislation be revised to state that:

*“Failure to comply with*

- any duty under the NRSWA and supporting regulations; or*
- any requirement in a statutory code of practice; or*
- such practice as appears to the Scottish Road Works Commissioner to be desirable*

*shall be deemed to be a failure to comply with Sections 118 and 119 of the NRSWA.”*

4.38 Of the six respondents who agreed that the definitions of co-operate and co-ordinate in Sections 118 and 119 be revised as proposed, only two provided reasons for this view. The reasons were that it would provide greater clarity and understanding.

4.39 A total of 14 respondents agreed with the first two bullet points, but did not agree with the third. The main reasons given for **supporting** the first two provisions were that these would remove any doubt about the extent of the Commissioner's powers to deal with failures to comply with statutory requirements, and that these would reduce disagreements between organisations.

4.40 However, there was strong feeling amongst many respondents that the third proposal should not be included in the legislation. These criticisms related to the subjective nature of the term, which was considered discretionary and not to add clarity to the legislation. This proposal was considered to give the Commissioner unreasonable/excessive powers, with some viewing this as leading to an autocratic approach to the co-ordination of works on roads in Scotland. Some pointed out that this could lead to disagreements/disputes as to what is 'desirable', or that it could be open to abuse by organisations that cover the whole of the UK rather than just Scotland:

*"The existing two criteria used to assess failure to comply have a clear statutory basis. However, the potential for subjectivity by any Commissioner decision in exercising the proposed third criteria does not appear to COSLA to provide the outcome of greater certainty and clarity to all parties within the process without further guidance to outline what would be broadly deemed desirable."* (COSLA)

4.41 It was also felt that where there are problems associated with failure to comply with the current arrangements which are related to co-operation, it would be better to deal with these using current legislation, rather than using a 'catch all' phrase:

*"There are certainly occasions where problems are caused by organisations refusing to comply with voluntary arrangements agreed by both sides of RAUC(S). However, these could be argued to fall within the everyday meaning of co-operation and so it should be possible for the Commissioner to deal with them within the existing legislation."* (Aberdeenshire Council)

4.42 Many respondents from groups one and two argued that the definitions should be clear and not open to misinterpretation, and that any changes should be agreed through RAUC(S) to ensure commitment and understanding by all:

*"Both roads authorities and utilities have a right to be able to interpret from the legislation itself the standard of conduct which is expected of them."* (Highland Council)

4.43 Seven of the 17 respondents who **opposed** this proposal stated that this was specifically because of the third bullet point. Two respondents, both from group one, stated that they could not support the legislative revisions unless point three was removed or clearly defined.

4.44 The other ten respondents, who opposed this proposal, stated that the existing definitions of 'co-operate' and 'co-ordinate', if used effectively, are right and appropriate and so the changes were

not necessary. These respondents also reported that the suggested amendment was open-ended and could be used inappropriately without suitable safeguards. The majority of these ten respondents stated that any proposed change should be agreed with and through RAUC(S), and ideally discussed within HAUC (UK). NJUG and those following their response proposed an alternative, as ways in which the Scottish Road Works Commissioner and RAUC(S) could deliver even greater results through raising the level of proactive co-ordination and co-operation by:

- Incentivising roads authority managers to reduce disruption through each authority agreeing individual targets for reducing the number of days overall occupation of the road; and
- Continuing to promote earlier advance planning, through the sharing of utility company and roads authority plans up to two years in advance, thereby allowing easier flexing of works to facilitate joint occupation or sequential working.

4.45 Lastly, seven respondents reported that 'greater clarity' was required. Four of these respondents simply stated that 'greater clarity would be beneficial', which most likely refers to greater clarity being required in all parts of the proposed revised legislation, but this was not made clear. The other three respondents offered more detail and suggested that there needed to be greater clarity of definitions as to what is meant by 'co-operate' and 'co-ordinate' as it is open to interpretation at present, and greater clarity would be required to enable enforcement:

*"JAG (UK) believes that the definitions of the respective duties do need clarification with more emphasis on those parts that can be clearly identified as failure to carry out the duty."*  
(JAG(UK))

#### Comparison of group responses

4.46 Of the six respondents agreeing that the definitions be revised as proposed, five were from group one, and one was from group four. Of the 17 who did not agree that the definitions be revised as proposed, ten were from group two, and seven were from group one. Of the 14 respondents who agree with the first two bullet points but not the third, 11 were from group one, and three were from group two. Lastly, six of the seven stating that more clarity is required were from group one, and one was from group three.

## **Summary of Compliance and Enforcement**

4.47 In all but the last question in this chapter (Question 13) there was a clear split between support for proposals from group one and opposition to the proposals from group two. Whilst group one respondents noted concerns and caveats to their support in some questions, overall they were supportive of the proposals in questions 9-12. In the main, the feeling among this group was that these changes would improve the effectiveness of the current system, making it more efficient and would improve co-operation. Increasing fixed penalty amounts were thought to increase the deterrent and increasing the Commissioner penalty limit was supported in order to encourage the road works community to continue to improve their performance in complying with their statutory

duties (although group one also had particular concerns about what the impact of an increase in penalty would be on them).

4.48 In the main, in Questions 9-12, group two respondents considered the proposals as unnecessary, considering there to be suitable existing measures/regulatory tools to deal with such issues; that often times there was no evidence to support these proposals, that they could increase the regulatory burden on businesses and potentially devalue working relationships in the road works community in Scotland. Group three respondents were more likely to be in agreement with the proposals or else to not have answered the questions.

4.49 Question 13 brought respondents from across the groups together in their opposition to the third bullet point, on 'such practice as appears by the Scottish Road Works Commissioner to be desirable'. There was strong feeling amongst many respondents that this should not be included in the legislation, because of what was considered to be the subjective nature of the term. The first two proposals in this question, however, were broadly supported by group one respondents.

## **5. REVIEW OF OTHER CURRENT AND PROPOSED LEGISLATION**

5.1 This chapter covers a wide range of issues which have previously been considered by the Scottish Road Works Policy Development Group, and which would necessitate new legislation. This encompassed four main questions on safety, record keeping, permissions, and a new designation of 'major road manager' for access to the Scottish Road Works Register.

### **Background**

5.2 The creation of the Scottish Road Works Policy Development Group, which includes representatives both from roads authorities and utility companies, allowed close attention to be brought on the legislation surrounding road works. This group identified a series of areas in which, for improvement to be made, there would have to be primary legislation.

5.3 The consultation sought views on whether the Code of Practice for Safety at Street Works and Road Works should become mandatory for roads authorities. It is already mandatory for utility companies, and so this proposal would make it clear that roads authorities and utility companies would be required to work to the same standards.

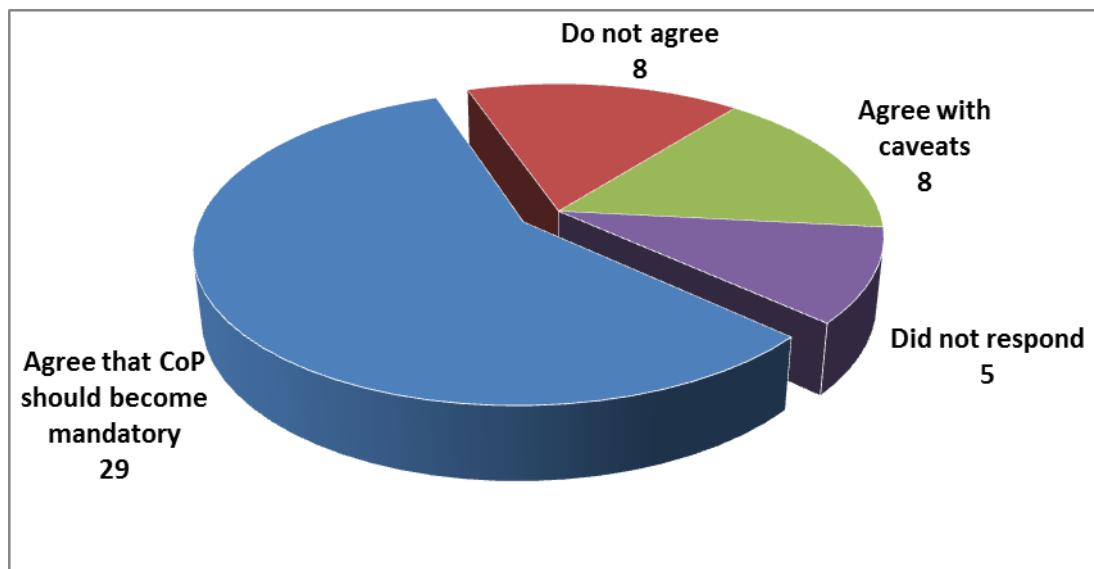
5.4 The consultation also included two questions on the subject of record keeping. The first explored it being made mandatory for roads authorities and utility companies to keep digital records of their apparatus in the roads and to supply it for use on the SRWR. The second sought views on record-holding obligations in situations where companies which do not have statutory rights to place their apparatus in the road are given access for specific projects.

5.5 The final question focused on the creation of a new legal entity of 'major road managers,' each of which would be individually identifiable and from large organisations such as major airport and seaport operators which own significant lengths of road open to the public. It would require these organisations to place notices of their works on the SRWR and aid the overall co-ordination of works.

## Findings

### Safety at Road Works

**Q.14. Do you agree that the Code of Practice for Safety at Street Works and Road Works should become mandatory for roads authorities? Please provide the reasons for your view.**



\* Of the five who did not respond to this question, four were from group three and one was from group one.

Key themes
1. The majority of respondents agreed that the Code of Practice for Safety at Street Works and Road Works should become mandatory for roads authorities.
2. The main reasons for this support were; consistency, parity of treatment and the removal of the anomaly of different prosecution levels, improved safety at road works for both operatives and road users/public, and improved quality of works and reduced disruption.
3. Those who disagreed with this proposal reported that roads authorities are obliged to comply with Chapter 8 of the Traffic Signs Manual. It was their opinion that the Code of Practice is directed at/more suited to works of an isolated excavation nature, and is not detailed enough to cover the type of activities carried out by roads authorities.

5.6 The main reasons given for **agreeing** that the Code of Practice for Safety at Street Works and Road Works (CoP) should become mandatory for roads authorities were that it would:

- Improve safety at road works for both operatives and road users/public:  
*“The impact and risk to the road users, pedestrians and the workforce is the same irrespective of who is undertaking the work.”* (Energy Networks Association)

- Provide a consistent approach for all, particularly in terms of the same safety standards and consistency for contractors, thus reducing confusion. Some respondents mentioned that contractors may work for both parties, and adhering to two standards can undermine the correct behaviours that the code of practice is in place to guide:

*“Whether the works are for road maintenance, street lighting, water or communications, we all use the same contractors and much the same equipment to complete our work. These works must be conducted safely through common standard to protect both the road users and the workforce implementing it.” (Vodafone UK)*

*“Yes, Scottish Water agrees that the Code of Practice for Safety at Street Works should become mandatory for road works authorities. Contractors working for both parties are unclear on what applies and when. Customers are confused about what standards should be expected from any organisation working on the road.” (Scottish Water)*

- It would remove the anomaly of different prosecution levels:

*“The Code of Practice for Safety at Street Works and Road Works is equally applicable to utility company works and roads authority works. Making it a statutory code for roads authority works would remove the current anomaly whereby utility companies can be prosecuted for a minor breach under the New Roads and Street Works Act whereas roads authorities can only be prosecuted under the much more draconian provisions of the Health and Safety at Work Act.” (East Renfrewshire Council)*

- Demonstrate fairness or ‘parity of treatment’.

- Improve the safety, quality of works and reduce disruption:

*“NJUG also believes that given that 27% of registered works in the road and overall around 50% of activities are completed by road works authorities, parity of treatment for all those undertaking works in the street would lead to a considerable improvement in the safety and quality of works, and reduced disruption.” (NJUG)*

5.7 Another less commonly stated view in support of this proposal was that roads authorities should lead by example.

5.8 The main reasons for placing a **caveat** to the support for making the CoP mandatory for roads authorities, was around Chapter 8 of the Traffic Signs Manual and concern that there should be a constant and uniform approach for anyone working on a road using the same legislation and safety directions.

5.9 Around half of those including a caveat to support felt that the CoP is primarily directed at works of an isolated excavation nature and therefore is not detailed enough to cover the full range of activities carried out by roads authorities. The CoP also refers heavily to Chapter 8 which roads authorities are already obliged to comply with. Over half of those stating caveats to support felt that



this anomaly would have to be fully addressed prior to implementation, with any new version catering for works on all types of roads (and traffic volumes) and not placing unreasonable demands on those undertaking works:

*“... any potential conflicts with Chapter 8 of the Traffic Signs Manual should be identified and rectified prior to any mandatory application of the code to roads authorities. Particularly in light of Health and Safety Executive use of the Traffic Signs Manual in prosecutions and the anticipated review of Traffic Signs Regulations and General Directions in the near future.”*  
(Dumfries and Galloway Council)

5.10 One respondent who had caveated support was concerned about the practical difficulties in the application of the CoP with regards to its interpretation on roads of sub-standard width. In particular, the concern was that strict application of the code would result in a far greater number of road closures where the specified safety zones are not achievable, with road closures and diversionary routes likely to be considerable in the Highlands. This respondent was concerned that roads authorities should be able to undertake a risk assessment to balance the danger to road workers with the dangers to traffic using diversionary routes.

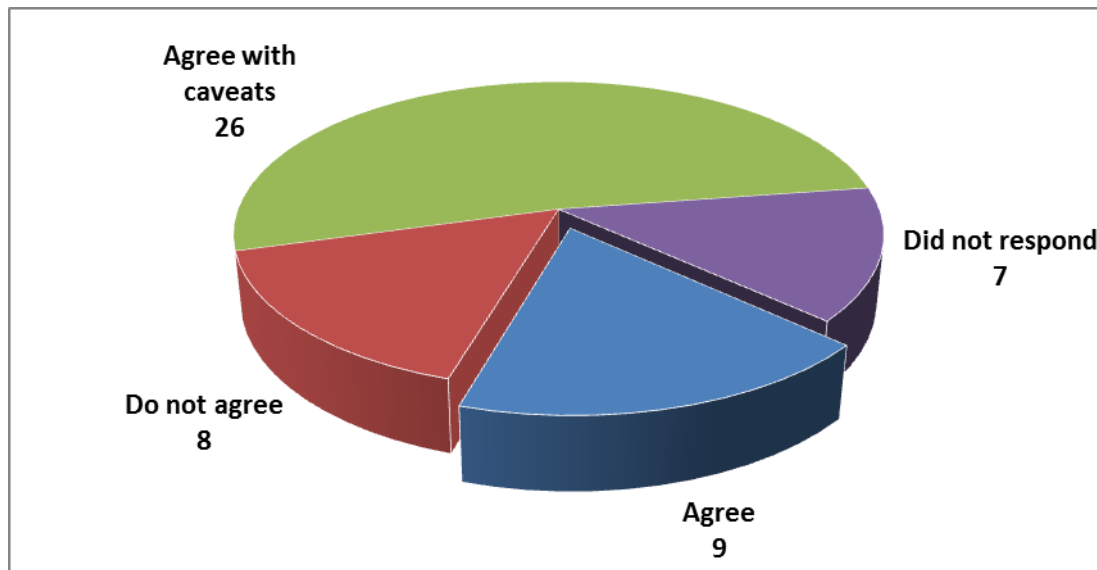
5.11 The main reasons for **disagreeing** that the CoP should become mandatory for roads authorities, were similar to the reasons held by those who had caveated support i.e. the different type of works carried out by roads authorities compared to utilities and the perception that the CoP is directed at/more suited to works of an isolated excavation nature, and it is not detailed enough to cover the range of activities carried out by roads authorities (such as resurfacing/reconstruction of roads). Lastly, there were concerns from two respondents as to how this would be policed/who would be responsible for ensuring compliance.

#### Comparison of group responses

5.12 Of the 29 respondents agreeing that the CoP should become mandatory for roads authorities, 13 were from group one, 13 were from group two, two were from group three and one was from group four. All of the eight respondents expressing caveats for support were from group one and all of those disagreeing with this proposal were from group one. This question demonstrated a split of opinion amongst group one, but with a majority in agreement with this proposal.

## Apparatus Records

**Q.15. Do you agree that it should be made mandatory for all utility companies and roads authorities to hold digital records of their apparatus in roads and to provide such digital records for use on the SRWR? Please provide the reasons for your view.**



\* Of the seven who did not respond to this question, four were from group three, two were from group one and one was from group two.

### **Key themes**

1. The main reasons for supporting this proposal were that it would improve the safety of operatives and the public over time and the planning of works. Planning and safety reasons overlapped, for example, around reducing the risk of damage.

2. The majority of respondents agreed to this in principle, but were aware of the significant scale of this exercise and the resource implications which were likely to be particularly onerous for roads authorities who do not currently have a complete digital record of all their existing assets. Some of those disagreeing with the proposal had concerns about security – particularly the implications of records ending up ‘in the wrong hands’.

3. Those supporting this proposal all stated that any change to a mandatory system would have to be introduced over a reasonable period and many suggested this should be phased in. Many respondents stated that timescales would have to take account of the scale of the task for all involved and would have to be mutually agreed.

5.13 The main reasons given for **agreeing** that it should be made mandatory for all utility companies and roads authorities to hold digital records of their apparatus in roads and to provide such digital records for use on the SRWR, were that it would:

- Bring added value and safety benefits to both utility companies and roads authorities with apparatus recorded on Vault. More specifically, with more remote access available, operatives would have up-to-date information on site for their safety and be able to avoid damage to other services.
- Assist in speeding up the planning of works, for asset management planning as well as general planning and design. Reasons given were that this could avoid conflict with other apparatus when planning a new connection, mains renewal or road construction, and/or would save time looking for water pipes and during emergencies, information on what infrastructure is in the area will be available in a more rapid and coherent manner:

*“It is very important to try to get as much accurate information on plant records as possible from all involved and the digital format is undoubtedly the solution for the future...”*  
(Shetland Islands Council)

*“With Vault already in operation in Scotland, the road works sector should work together to use it to move towards digital records over an agreed period of time.”* (NJUG)

5.14 However, half of the respondents had **reservations or caveats for their support**. A major concern held by respondents (from groups one and two) was around whether this change would be retrospective or prospective. This was not made clear in the question and so may explain some of the reservations expressed by respondents.

5.15 There was a stark difference in opinion in support for this going forward for organisations already holding digital records, for whom the additional cost incurred in providing this to the SRWR through the Vault system was considered likely to be manageable (and could therefore be made mandatory in the short term). However, the task of creating digital records where they do not currently exist was considered likely to be an extremely onerous task, (identifying and surveying all assets then developing digitalised records), and one which would require a significant transition period.

- **Cost** – The main concern for roads authorities was the financial burden, particularly the time and resources required in a financial context of on-going budgetary and resourcing cuts and that consideration of this would need to be taken into account. Many roads authorities stressed the scale and the cost of this task, in terms of the quantity of apparatus for which there is no record at all and for which extensive site survey work would be required to form a complete record, and in terms of the cost of creating digital records, (ensuring asset data is captured, recorded, checked for accuracy and maintained), which was thought to be potentially prohibitive for some organisations. This was felt particularly strongly by the roads authorities who do not currently have a complete digital record of all their assets:

*“It would be desirable. However, it should be noted that Dumfries and Galloway Council only has readily available records for apparatus in new roads built with construction consents. Gathering/making available other data would be an expensive and time*

*consuming task and a risk managed approach to gathering data for apparatus likely to cause harm or damage may be more cost effective.” (Dumfries and Galloway Council)*

- **Timescales** – Because of the perceived scale of this task, respondents in both group one and two stated that, if this were to be made mandatory, there would need to be sufficient time allowed to comply i.e. a long term and phased lead in period, in order to minimise additional costs for both utilities and roads authorities. Respondents stated that implementation of this would need to be over a reasonable and agreeable timeframe and suggestions of between three to ten years were given as an indication of how long this process might take. Others did not state a length of time, but noted that consideration would have to be given of the time and financial costs that the collection or preparation of this vast amount of information would involve before any timescale is set:

*“Extra time must be given with regards to the collating and surveying of the apparatus details that are, at present, not held by the roads authorities and utilities.” (East Renfrewshire Council)*

5.16 Several respondents also wrote that safeguards would need to be in place, with reference to drainage works. They stated that it would be unreasonable to expect third parties to be responsible for providing plans for apparatus that was placed by unknown third parties or for apparatus where the owner is no longer in business. They also stated that additional funding would be required by each roads authority if they were to be required to submit electronic plans of drainage networks.

5.17 Lastly, one respondent from group two had reserved support for the proposal because of concerns over confidentiality to protect sensitive apparatus. This respondent stated that they would want to work with the SRWR team to mitigate the risk to their business. Security concerns were also held by those disagreeing with this proposal.

5.18 Interestingly, those disagreeing with this proposal did agree *in principle* with the purpose of Vault and that it would be desirable/best practice for all utility companies and roads authorities to hold digital records of their apparatus in roads and to provide such digital records for use on the SRWR. However, they did not agree that this should be made mandatory. The main reasons given for **disagreeing** with this proposal were:

- **Financial Costs** – for roads authorities, this view was held particularly by those who do not currently hold all records of all their apparatus (particularly drainage) and so could not provide digitalised records without considerable financial resources. One group two respondent also raised the resource implications and timings for utilities of updating electronic records and stated that mandatory digital records could result in additional costs for the utility companies and these would most likely be passed on to the consumer.
- **Security concerns** – particularly around the implications of records ending up ‘in the wrong hands’:

*“Further development of the SRWR would be required to ensure that there is adequate security of undertakers and road works authority data, that this is held separately from information that may be publicly available under S112 of NRSWA and that there are appropriate controls of access permissions to ensure that that data is only accessed by authorised persons under S138 of NRSWA. In this respect, a Code of Practice on Security and access to Plant Information would be required.” (Scottish Water)*

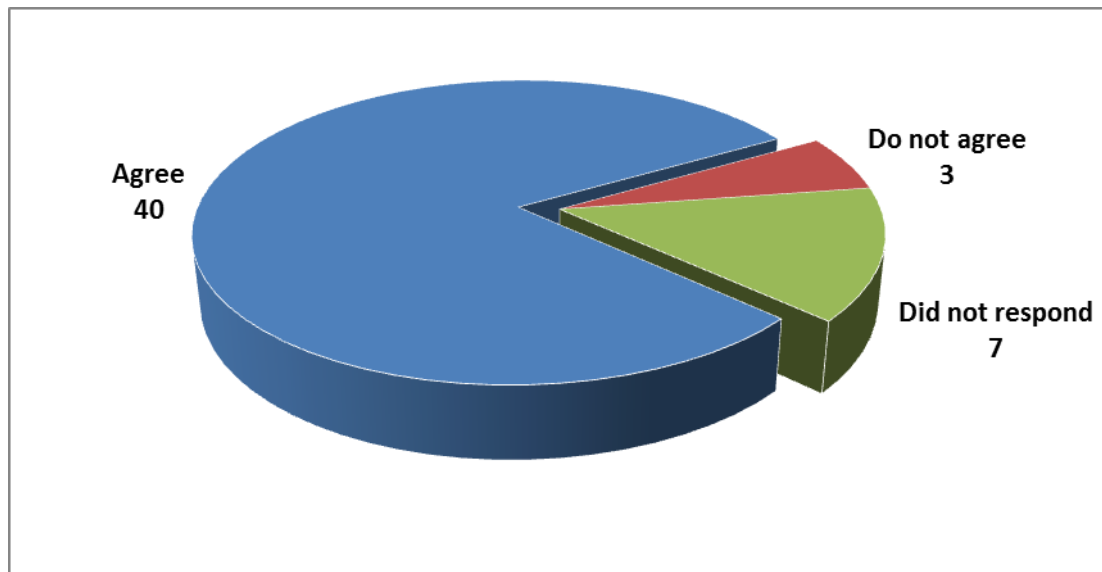
- **Existing apparatus** – several respondents noted that much of the apparatus has no known owner/is historic and no electronic records exist for the apparatus. Respondents felt that in the current financial climate it was not reasonable to expect a large scale asset management information gathering exercise to be carried out to provide this information. Indeed, it was felt that some apparatus types are a low health and safety risk in any case (such a verge drainage) and so there is no immediate need to provide details of those types of networks electronically.

#### Comparison of group responses

5.19 Responses to this question were more spread across groups than in other questions. Those in group two were more likely to raise concerns about security which was not something raised by respondents in group one. Respondents in group one were more likely to express concerns about the scale of the task and the cost and resource implications of making this mandatory. However, respondents from both groups one and two stated that if this were to be made mandatory, there would need to be sufficient time allowed to comply in order to minimise additional costs for utilities and roads authorities.

## Section 109 Permissions

**Q.16. Do you agree that Section 61 of the Roads (Scotland) Act 1984 be repealed and Section 109(2) of NRSWA revised to provide more clarity as to where responsibility for record keeping of apparatus should lie? Please provide the reasons for your view.**



\* Of the seven who did not respond to this question, four were from group three, two were from group one and one was from group two.

Key themes
1. The vast majority of respondents agreed with this proposal. The main reasons for support were that it would reduce confusion and uncertainty, bring consistency and clarity, and be a more efficient way of undertaking works.
2. Many respondents stated that responsibilities for record keeping would need to be clarified.
3. Two of the three respondents who disagreed with this proposal, stated that responsibility for maintaining record keeping lies with the owner of the apparatus and not with the roads authorities.

5.20 The main reasons given for **agreeing** that Section 61 of the Roads (Scotland) Act 1984 be repealed and Section 109(2) of NRSWA revised were that:

- The two pieces of legislation duplicate each other and this would **reduce confusion** between the two sections of legislation.
- Section 109 is superior because it requires record keeping and gives clearer direction. This move would provide **consistency** and would help **clarify and standardise** approaches between different authorities, creating less room for errors or problems, and improving efficiency and performance.

- Section 109 gives road works authorities more protection and control over works being carried out by non-statutory utilities and allows for the inspection regime to be applied to these works.
- Respondents from group two stated that it is vital to have as much relevant data as possible on utility and authority apparatus held on a central register that the road works community has access to, irrespective of who has carried out the works:

*“Record keeping is of vital importance to both utilities and road works authorities, in particular in respect of safety, effective planning and efficient undertaking of works.” (NJUG)*

*“Section 109(2) of NRSWA should be revised to give clarity as to record keeping because it is clearly pointless in gathering and updating digital records unless there is an integrated and coherent manner.” (Transform Scotland)*

5.21 Eight of those in support of this proposal specifically mentioned responsibilities for record keeping in their response and, in particular, that responsibilities for record keeping would need to be clarified.

5.22 One respondent stated that their support for this proposal was only given if the permission does not place an administrative burden on roads authorities to record and advise other parties of this apparatus. This respondent added that an appropriate method of maintaining records of this apparatus must be in place *prior to* repealing Section 61 of the R(S)A.

5.23 Three respondents stated that NRSWA should be revised in respect to clarifying responsibilities for record keeping. Four respondents stated that while they support this proposal, responsibility for maintaining the records of apparatus should lie with the owner of the apparatus (the roads authority may not know whether apparatus is redundant or changed). Another respondent stated that the responsibility for record keeping should lie with the utility company in cases where they plan to adopt the apparatus on completion of the works. This respondent argued that in the majority of cases the utility company are consulted at works planning stage and are aware of what they will be adopting, but that roads authorities should be responsible for record keeping in other cases.

5.24 A number of further points were made by those agreeing that Section 61 of the Roads (Scotland) Act 1984 be repealed and Section 109(2) of NRSWA revised. These were as follows:

- Three respondents noted that Section 61 should be repealed with respect to *new permissions* but that it should remain in force for existing permissions.
- Two respondents stated that the issue regarding the ability to request a bond from developers under Section 109 would have to be resolved prior to Section 61 being repealed.
- Any revisions should take into account the need to record Sustainable Urban Drainage features such as swales, as well as more traditional apparatus (one respondent).

- Any part of Section 61 that defines or clarifies matters should be transferred to Section 109 (one respondent).
- It should be investigated to see if there are any other circumstances where Section 61 needs to be used and therefore not repealed but clarified as to its use apparatus (one respondent).
- It should also be a requirement to upload relevant information to Vault (one respondent).

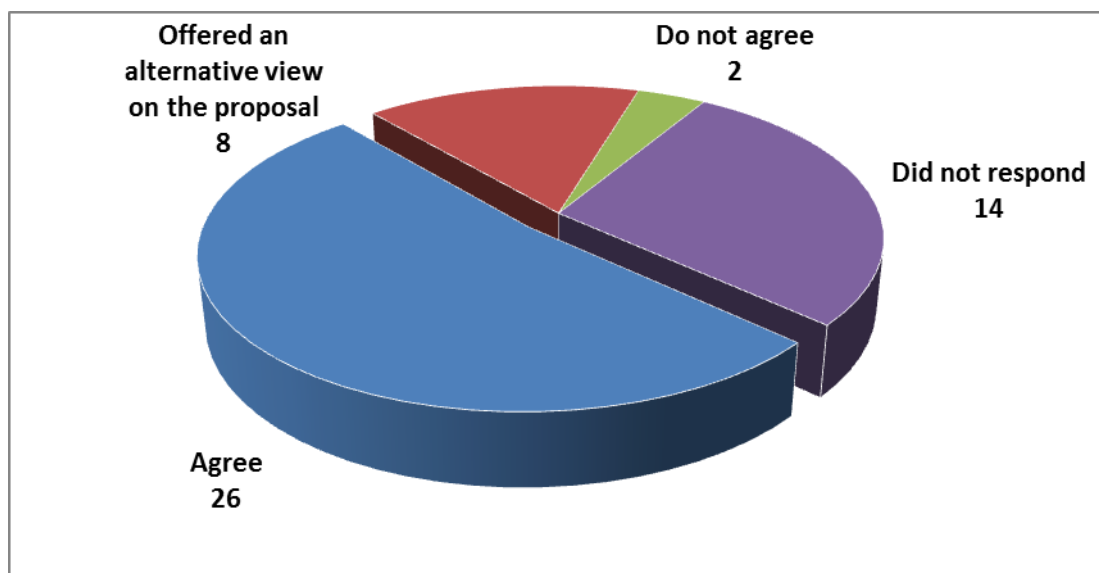
5.25 Lastly, three respondents **disagreed** with this proposal. All three were from group one, and two of the respondents stated that responsibility for maintaining the records of apparatus and providing a record of the apparatus in a suitable digital format for uploading to the SRWR lies with the owner of the apparatus and not with the roads authorities. The other respondents stated that, where the plant is installed or maintained by a utility company, Section 61 of R(S)A should be used, and it is only where the plant remains the responsibility of the installer should Section 109 of NRSWA be used.

Comparison of group responses

5.26 All but one of the group two respondents agreed with this proposal, as did the vast majority of group one respondents. However, group one respondents were more likely to mention the issue of responsibilities for record keeping in their response, or to make additional comments.

Road Managers

**Q.17. Do you agree that the designation of ‘major road managers’ be created? Please provide the reasons for your view.**



\* Of the 14 not responding to this question, eight were from group one, five were from group three and one was from group two.



Key themes
1. The majority of respondents agreed with this proposal, the main reason being that it would assist in the co-ordination of works.
2. The main reason for disagreeing with this proposal was that there is not enough evidence to justify a change.
3. Eight respondents did not offer their agreement or disagreement but stated an opinion. These included; lack of relevance to rural areas and security concerns.

5.27 The main reasons for **agreeing** that the designation of ‘major road managers’ be created were:

- It would assist in the co-ordination of works.
- It would assist utility companies identify the owners of roads that are not trunk/local roads.
- It would assist in general traffic management with the public, as they would be required to adhere to the same regulations as others.

5.28 However, comments made by those supporting the proposal included:

- This should only relate to roads where a minimum number of works are undertaken.
- Where bodies manage significant roads infrastructure they should be subject to the same regulations of the SRWR.
- There should be a definition as to what it refers to e.g. minimum road length, number of works etc.
- All works and records should be on the SRWR.
- This should only apply to seaport, airport and bridge authorities.

5.29 The main reasons for **opposing** the proposal were that it is not required and there is not enough evidence to justify a change.

5.30 **Alternative** views expressed were that:

- It is not relevant to rural areas but seems sensible in theory.
- It would only benefit roads authorities and there may be potential security concerns:

*“This would only benefit road works authorities who would not have to enter S109 permissions on to the Scottish Road Works Register. We would also be concerned that this*

*would potentially provide access to our plant information where this would otherwise have been restricted.” (Scottish Water)*

### Comparison of group responses

5.31 Support for this proposal was shared by respondents in groups one and two. Of the 26 respondents who supported the proposal to create the designation “major road managers”, 15 were from group one and ten were from group two. Two respondents opposed the proposal, one from group one and the other from group four. A further eight respondents offered an alternative view on the proposal – six of those were from group one and two were from group two.

## **Summary of Review of Other Current and Proposed Legislation**

5.32 The questions in this chapter showed agreement towards the proposals and greater consensus across the groups than the previous chapter. The majority of respondents agreed that the CoP for Safety and Street works and Road Works should become mandatory for roads authorities. This was supported as it would remove the anomaly of different prosecution levels and would introduce consistency in terms of the same safety standards. Those disagreeing with this proposal reported that roads authorities are obliged to comply with Chapter 8 of the Traffic Signs Manual which, they perceived, conflicts with the Code of Practice for Safety at Street Works. All of the group two respondents agreed with this, but there was a split of opinion amongst group one, with the majority in favour.

5.33 The vast majority of respondents agreed in principle with the proposal in Question 15 but many had caveats, perhaps because the question did not clearly state if the proposal was retrospective or prospective. All supporting this made clear the sheer scale of the task and argued that any introduction would be costly and would need to be introduced over a reasonable and agreed period of time. Security concerns were expressed by some of those disagreeing with the proposal.

5.34 Forty out of the forty three respondents answering question 16 on Section 109 permissions agreed with this proposal. This was considered to reduce confusion and uncertainty, bring consistency to roles and responsibilities and record keeping and be a more efficient way of undertaking works.

5.35 A large number of respondents did not answer the last question in this section on major road managers. The majority of those who did respond supported the proposal, agreeing that it would assist in co-ordination of works. Half of group one and over two thirds of group two supported the proposal. Overall, this section of the consultation saw more of a split *within* groups.

## 6. CO-ORDINATION OF WORKS

6.1 This chapter reports on the largest section of the consultation, which asked thirteen questions all on the core subject of road works co-ordination. Co-ordination is one of the most important elements when undertaking road works, and there has been considerable previous work in this area. An earlier consultation on the Code of Practice for Co-ordination of Works in Roads, which closed in October 2012, revealed a number of technical issues to be explored, many of which were included in the current consultation.

### Background

6.2 Roads authorities have responsibility for co-ordinating all road works by utility companies and works for road purposes. The aim is to balance the statutory rights of roads authorities and utility companies to carry out works, with the expectation that disruption from works shall be kept to a minimum. To facilitate this, advanced notice of works requires to be given. The consultation specifically questioned if the existing three month advanced notice period was perceived as appropriate, and a second question was also asked about whether three months was required for non-traffic sensitive roads.

6.3 Also in the interests of better co-ordination, an early start procedure has been created and endorsed by the Commissioner to provide flexibility to allow works to start without providing the statutory minimum notice period for an 'advance notice' in some circumstances. While the use of this early start procedure has been voluntary to date, the consultation asked respondents whether the early start procedure ought to be statutory.

6.4 In the case of road works that are classified as 'urgent', there is logic that such works should start as soon as possible and, as part of the consultation, views were sought on whether noon the following day should be a statutory requirement for commencing any such works classified as urgent. This would potentially assist co-ordination by reducing instances of misclassification of works.

6.5 In the interests of achieving parity between both roads authorities and utility companies, a question was also asked about whether legislation be introduced to ensure that roads authorities are required to provide the same information as utility companies and to the same timescales for all expected starting dates, urgent works and emergency works. Views were sought to explore if the availability of such information for all may, again, improve co-ordination. Similarly, at present, regulations are in place which allow utility companies the flexibility of not requiring to place notices for works involving no or minimal excavation on non-traffic sensitive roads, and a question was asked about whether this same flexibility should be afforded to roads authorities and regularised.

6.6 In the interests of making as much information available as possible on works, to facilitate co-ordination, questions were also asked about whether regulations should be introduced, similar to those in England and Wales, to require roads authorities and utility companies to place notices on the Scottish Road Works Register when works commence, i.e. actual start notices, and for such notices to be lodged by noon the following day for all works. As well as benefiting co-ordination,

such noticing may also have benefits to third party organisations and public road users alike in terms of confirming what works in roads are actually underway.

6.7 As with actual start notices, works closed notices are required from utility companies by the end of the next working day on completion of their works (and, as discussed above, views were also sought on whether this would be appropriate for roads authorities). Although experience in the road works community to date would suggest that this allows for general co-ordination, views were sought on whether changes to this timescale may be appropriate to allow for even better co-ordination.

6.8 At present, a period of up to seven days from the expected start date given for works to actual commencement is allowed (depending on the type of works), and this applies only to utility companies. The consultation sought views on whether the same validity periods should be applied to roads authorities, in the interests of consistency, as well as whether the validity periods should be reduced to give greater certainty as to when works will actually commence.

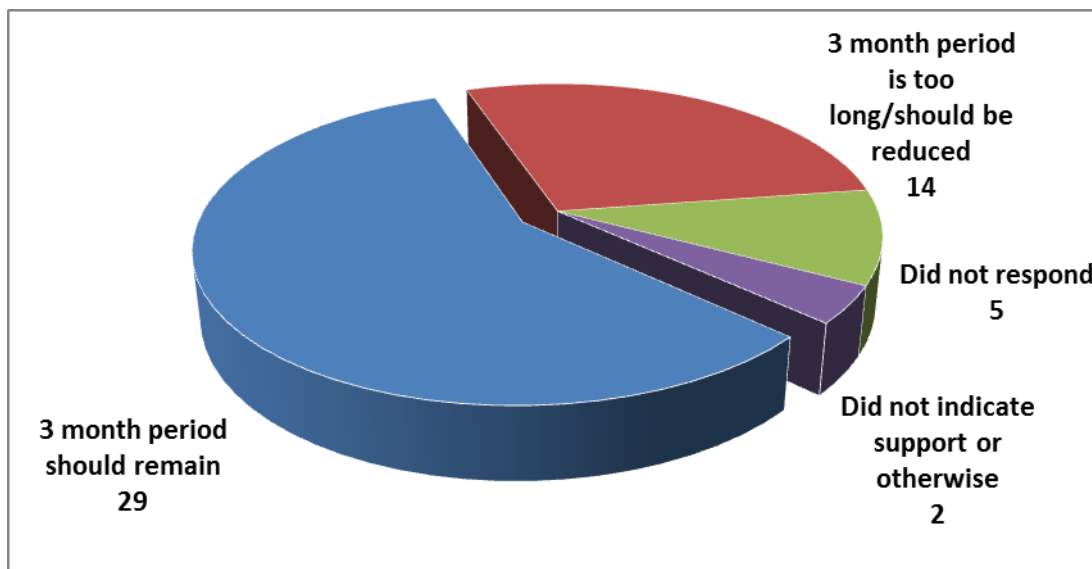
6.9 Two further questions were asked, both with regard to the statutory powers held by roads authorities, firstly, to impose maximum durations for works on utility companies (i.e. where they consider the period proposed is longer than should be necessary) and, secondly, whether they should be given powers to impose embargoes on works for reasons other than traffic disruption. Both such measures were designed to improve the timeliness of works completion with a view to aiding co-ordination.

6.10 The final question in this section sought views on a revised definition of 'working day', specific to the Scottish road works community. This was proposed as an alternative to the existing definition of working day given at Section 157(2) of NRSWA and was put forward as a more locally appropriate definition.

## Findings

### Advance Notice Periods

Q.18. What are your views on the 3 month advance notice period for major works?



\* Of the five respondents who did not answer this question, four were from group three and one was from group one.

Key themes
1. The majority of respondents thought that the three month period is necessary for good co-ordination.
2. Some of those supporting the three month advance period felt that the early start procedure provides the flexibility when required (if appropriate) and that reducing this three month period would have negative consequences, in terms of co-ordination and in terms of the message it would send out to utility companies.
3. The reasons given for supporting a reduction in the three month period, were that it restricts flexibility, is excessive in rural areas and can have negative consequences (i.e. increases the number of early starts).

6.11 Of the 29 respondents who felt the three month period was necessary/should remain, opinions ranged from seeing this period as an absolute minimum to those who considered it suitable in principle but who also had reservations. The main reasons given for **supporting** the three month advance notice period for major works were:

- It aids co-ordination and allows sufficient time: to effectively plan the works; for anyone who has other planned works to be made aware of the proposals; to contact the major works promoter and, if necessary, programme in works before the major works are due to

take place; for roads authorities and utility companies to discuss local issues; for other utilities to be aware of and have the opportunity to co-ordinate works, either at the same time and location or to avoid works in the vicinity during the period (especially important for major works to which the three month period applies) and to give roads authorities some influence over the timing of works (which would be lost if only seven days' notice were given).

- It has a positive impact on bus and freight operators and on passenger transport. Retaining a three month notice period is one way to ensure that operators have long enough to plan and publicise service disruptions to inform passengers, should such steps be necessary:

*“Advance notice of road works is vitally important for passenger transport operators. Operators with a registered bus service are duty bound to run that service punctually and reliably. There is a set window of tolerance for deviation from the scheduled running time and any external factor that impacts upon a route needs to be taken into consideration as early as possible.”* (CPT)

- The early start procedure provides flexibility when used in conjunction with the three month advance notice period for major works.

*“The three month advance notice coupled with the early start provision ensures that works are discussed and agreed at an early stage and are not unnecessarily held up once agreements are in place. Undertakers who co-operate with the roads authority are not disadvantaged by a three month period.”* (Stirling Council)

- The early start procedure forces utility companies to provide details of their planned works at an earlier stage. Several respondents from group one stated that utility companies provide various reasons for failing to bring details of works proposals to the table at local co-ordination meetings.
- Any reduction in this advance notice period would have negative consequences both for co-ordination and in terms of the message it would send out to utility companies. In terms of the impact on co-ordination, it was felt that allowing each Major Project to start in any less than three months from the initial notification of it, would require roads authorities to only concentrate on issuing directions, to the detriment of any other duties they carry out:

*“It would be impossible to read, respond to, request meetings for, and agree traffic management/timing for several projects over several months if each one can start in less than three months from your initial notification of it. It would require roads authorities to concentrate on nothing but issuing directions against new requests each day to the detriment of any other duties.”* (West Lothian Council)

- Major capital works are not approved without detailed pre-planning and notification is a valid part of that pre-planning:

*“Shortening the notice period would send the message that you keep your pre-planning in house, and then notify at the stage where a contractor is appointed and a final design agreed. No organisation that co-operates with the road authority is disadvantaged by a three month notice period.” (City of Edinburgh Council)*

6.12 **Other points made by those supporting** the three month advance notice period for major works included:

- The current definition of ‘major works’ is too wide/vague and can include some works that are/could be considered minor in nature. A revision to the narrow criteria for major works is required.
- Early starts on major works should be monitored separately.
- Many smaller projects away from busy arterial routes get pulled into the category because they are on a programme and early starts are required to facilitate the works promptly to the benefit of the public. For example, if any works require a road closure, for even the shortest time, then the SRWR automatically sets the works to major works. It should be the case that if works require a Temporary Traffic Regulation Order (TTRO) then the major works heading would suffice but if the works only require a Temporary Restriction Notice (TRN) then the works should be set as ‘standard works’.

6.13 Responses from roads authorities highlighted **problems** they can encounter in meeting the requirements for the three month noticing period:

- Several participants stressed that the three month notice period lacks flexibility where a roads authority is required to accelerate financial spend at particular times of the year or when facing unforeseen events.
- Damage to the road network following a prolonged spell of severe weather requires structural maintenance repairs at short notice.
- Advance notices should be not have a restricted validity period. Three respondents stated that the advance notice should be placed before the works have been firmly scheduled in order to allow flexibility to co-ordinate with any other major works at the same location.
- Details of the location of planned major works should be placed on the Register as early as possible in order to maximise the opportunity for co-ordination. Utility companies notice ‘major works’ on SRWR three months in advance but the full details of their operations are never submitted to the local authority at this time (not uncommon practice). This causes problems for co-ordination with other utility works and with keeping the general public advised on what is happening on the road network locally. The three month advance notice

period is generally helpful in achieving this. However, some issues have been experienced when programming major capital works where an external contractor is to be appointed.

6.14 The main reasons given for **not supporting** the three month advance notice period for major works were:

- **This is excessive in rural areas** – group one respondents from some rural areas felt that this can be difficult to achieve in their areas where they rely on a smaller, less flexible workforce and where weather plays a part in increasing the numbers of early starts. It was felt that while three months might be appropriate on the main arterial routes within major cities, three months is excessive even on the most heavily trafficked routes in rural areas. For works on these routes, a period of between four and six weeks was suggested as adequate:

*“Whilst the three months’ notice may be appropriate for routes such as the A977, we believe that for even some of the busier of our rural roads such as the A94 and A91, the three month notice for works which may only last ten days is excessive and leads to unnecessary bureaucracy and notice failures with difficulties of predicting actual start dates for works at a time when contractual arrangements have not been finalised and weather conditions cannot be predicted.”* (Perth and Kinross Council)

- **This period restricts flexibility** – the requirement to give three months advanced notice for certain types of works can restrict flexibility and present difficulties within specified time limits e.g. customer driven connections where utilities may be obliged to connect customers within specified time limits. Scottish Water stated that the three month period is too long for programming and planning purposes.

*“Estimating start dates this far in advance is difficult as they are affected by changes in our programme and other unforeseen delays over the course of the three month period. The result of relying on the three month advance notice period for major works has increased the number of early starts required to meet programme requirements and customer expectations, and reduced meaningful data and co-ordination on the Register.”* (Scottish Water)

6.15 Many of the group two respondents stated that, while they fully supported providing notice on works with sufficient advance notice to allow for effective co-ordination, the three month notice does not always work in practice for certain types of customer-driven works (e.g. commercial connections). NJUG argued that this presents difficulties for utilities who are required to connect customers or enhance their services within specified time limits. Utilities often have little advance notice themselves of the customer service contract to supply a new service. Therefore, *“a more broad-ranging option is proposed of one month for certain types of customer-driven work and three months for long-term planned works.”*



- **Unintended consequences** – The increase in the numbers of early starts was mentioned by respondents in groups one (in rural areas) and two. This in itself was seen by some as an additional administrative burden. There was also the concern that the three months’ notice requirement can drive inappropriate behaviours to circumvent the process due to administrative burden, which could lead to works being started without the appropriate permissions being served on the Register.

6.16 **Suggestions** by those not in support of the three month period included more effective planning and co-ordination earlier in the process which should allow the formal notice period to be reduced from three months:

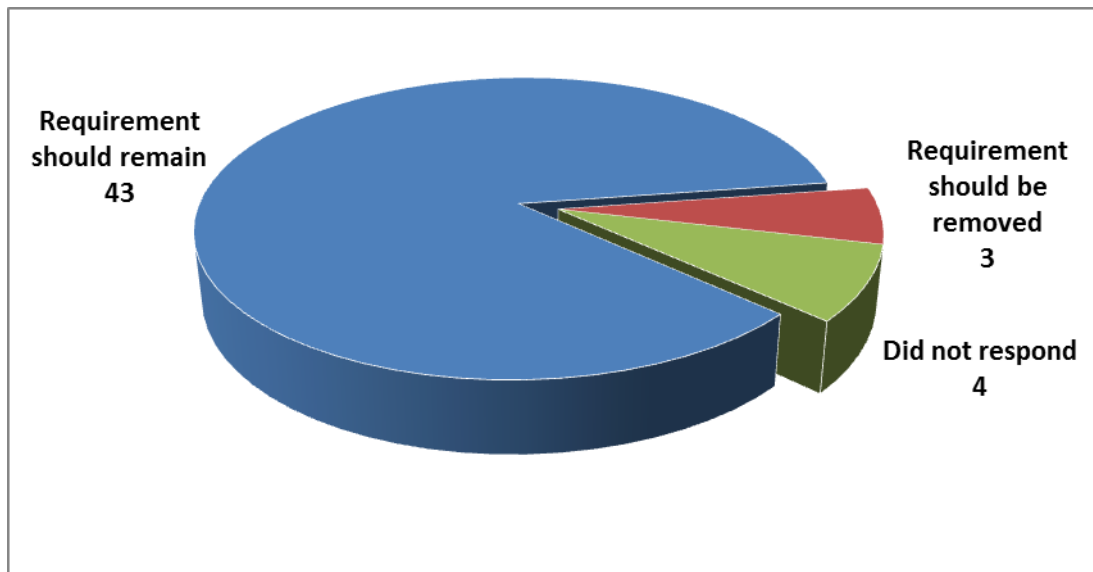
*“The main tool for good co-ordination is quality advance notice of all major works and the introduction of advance notification using ‘Potential Works’ notices aids this by providing a process for early notification of works (location and duration) without the unnecessary limits of exact start dates (and validity periods).” (SGN)*

#### Comparison of group responses

6.17 Of the 29 respondents who felt the three month period was necessary, 20 were from group one, one was from group two, two were from group three and one was from group four. Of the 14 who thought this period should be reduced, ten respondents were from group two and four were from group one. Those who did not indicate support or otherwise, but made a separate point, were from group two.

### Advance Notice Periods – Non Traffic Sensitive Works

**Q.19. Do you consider that the requirement to provide advance notice for works on non-traffic sensitive roads should be removed? If you do, what benefits do you consider this would bring?**



\* All of the four not responding to this question were from group three.

Key themes
1. The vast majority of respondents from all groups thought that the requirement to provide advance notice for works on non-traffic sensitive roads should be maintained.
2. Ten of the respondents stated that they would recommend a return to one month of notice of major works on non-traffic sensitive roads. This was thought to still allow local co-ordination without being overly burdensome on utilities and roads authorities.
3. There was only one reason given for the benefits that a removal of this would bring.

6.18 Overall, 43 of the 46 respondents who answered this question reported that the requirement to provide advance notice for works on non-traffic sensitive roads should remain/should not be removed. However, eight respondents also stated that they would recommend a return to a one month notice for major works on non-traffic sensitive roads. This was thought to still allow local co-ordination without being overly burdensome on utilities and roads authorities.

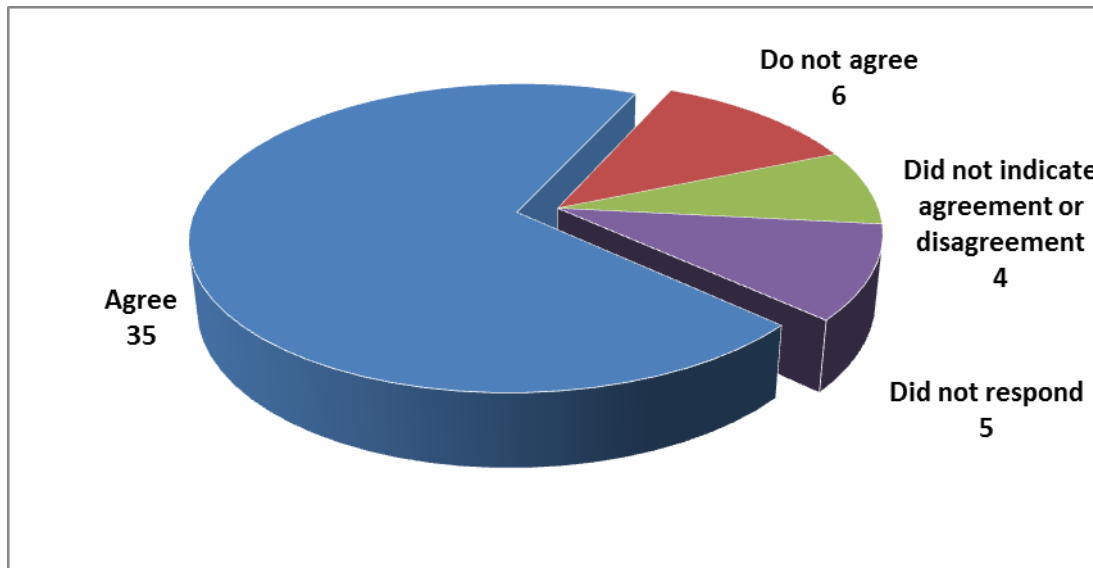
6.19 Two of the three respondents who **disagreed** with this proposal stated that it should be removed, but replaced with a one month period. The one respondent who stated that it should be removed completely stated that it would bring more rapid completion of work, and possibly the ability to help companies maintain a work stream for their work force.

### Comparison of group responses

6.20 There was widespread agreement across the groups that the requirement to provide advance notice for works on non-traffic sensitive roads be maintained. However, those who suggested a reduction to one month on non-traffic sensitive roads were more likely to be in group two.

### Early Start Procedure

#### Q.20. Should the early start procedure be a statutory requirement?



\* Of the five who did not respond to this question, three were from group three and two were from group one.

Key themes
1. The majority of respondents agreed that the early start procedure should be a statutory requirement. The main reasons for this were that it would allow flexibility and better co-ordination of works.
2. The main reason for opposing the proposal was that the voluntary use of non-statutory advice is adequate and is a good example of the way in which roads authorities and utility companies co-operate to co-ordinate road works.
3. Seven of the group two respondents who supported this stated that their support was dependent on an agreed RAUC(S) Advice Note.

6.21 The main reasons for **agreeing** that the early start procedure be a statutory requirement were that it would allow flexibility and better co-ordination of works. It was also perceived that it would improve co-ordination and stop abuse of the system:

*“Because a statutory requirement would give greater control in the co-ordination of major works than the code of practice allows for, since its status is open to a degree of abuse.”*  
(Dumfries and Galloway Council)

6.22 Seven respondents supported this but only provided it is based on an agreed RAUC(S) Advice Note. Two other respondents stated that this should be accompanied by Fixed Penalty Notices for any breaches.

6.23 The main reason for **opposing** the proposal was that the voluntary use of non-statutory advice is adequate and does not need to be changed. This was mentioned by five respondents. One respondent expressed the view that it would nullify the benefit of giving advance notice to public transport operators of impending works:

*“We believe the voluntary use of the non-statutory Advice Note to be adequate and consider that the process of agreeing early starts is a good example of the roads authority/utility companies co-operation to co-ordinate road works.”* (Angus Council)

6.24 The **alternative views** that were expressed were that:

- This is already a statutory provision under S114. Is an amendment to this provision being requested utilising an Advice Note?
- The provisions for this need to be clearly set out and are already included in statute under S114 of NRSWA. If the intention is that the Code of Practice for the Co-ordination of Works in Roads becomes a statutory code of practice, this document would need to be agreed through RAUC(S).

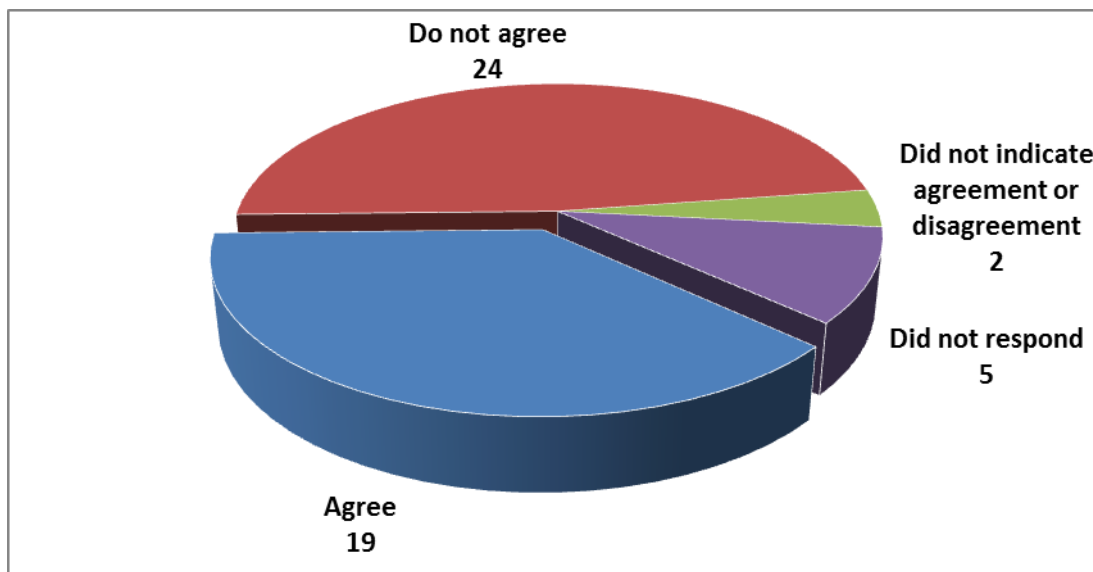
6.25 All others expressed that there were no current issues with the existing voluntary early/late start procedure.

#### Comparison of group responses

6.26 Over two thirds of respondents (35) supported the proposal, and of these, 22 were from group one, ten were from group two, two were from group three and one was from group four. Six respondents opposed the proposal and, of those, five were from group one and one was from group three. Four respondents offered an alternative view on the proposal (three from group two and one from group one).

## Urgent Works

**Q.21. What are your views on making noon the following day a statutory requirement for commencing urgent works?**



\* Of the five who did not respond to this question, three were from group three and two were from group one.

Key themes
1. The majority of respondents did not agree with this proposal. The main reasons given were that this would not fix the problem of misuse of the urgent works classification and that urgent works often cannot be started immediately.
2. Those supporting the proposal thought that this was a reasonable period for the commencement of urgent works; it clarifies the importance of starting genuine urgent works within a fixed timescale; and may deter the use of the 'urgent works' category simply as a means of avoiding statutory notice periods.
3. Both those supporting and opposing this proposal put forward suggestions and comments on how this should or should not be implemented or suggested alternative measures.

6.27 There was some confusion with this question among respondents, and many made comments about their support (or otherwise) for amending the two hour notice period for urgent works, instead of answering the actual question about changing the statutory footing of existing requirements. Although not proposed as part of the consultation, some respondents expressed that the change in noticing time would create additional problems for local authorities in their co-ordination duties. Overall, seven roads authorities stated the current standard of recording urgent works within two hours of commencement should not be changed since:

- The proposed change could lead to significant works and traffic management continuing without the roads authorities' knowledge; and
- Extending to the following day could result in potentially significant works or traffic management taking place without the knowledge of the roads authority.

6.28 Overall, 19 respondents agreed with making noon the following day a statutory requirement for commencing urgent works but most of these respondents included comments about other things they would also like to see added/changed. The main reasons for **supporting** the proposal were:

- This is a reasonable period for the commencement of urgent works.
- It gives clarity to the importance of starting genuine urgent works within a fixed timescale and encourages a more disciplined approach to commencing these works.
- It will deter the use of the 'urgent works' category simply as a means of avoiding statutory notice periods:

*“Scottish Water is satisfied that the current requirements allow the required flexibility to manage works appropriately. There will be circumstances under which urgent works to repair leaks will require to be planned due to complex network operations that require planning, pressure management to protect the network and to minimise disruption to customers.”* (Scottish Water)

6.29 Other points made by those **supporting** the proposal (listed in order of the frequency with which they were mentioned) were:

- This should be for non-traffic sensitive roads only and not on traffic sensitive roads as this requires a two hour notice of starting.
- More clarity is required as to what urgent works actually are.
- The onus should still be on the utility company to prove that the works are urgent.
- It is essential that the utility company informs the roads authority as soon as they are aware of the need to begin urgent or emergency works to allow for co-ordination.
- An effective new condition might be the introduction of a mandatory requirement to state the reason for works qualifying as urgent on the notice.
- Would also like it to be established that if works have not started by noon the following day that works cannot be considered urgent.
- Further investigation is required into defects that can be left untouched for weeks/months and then suddenly become urgent.

- It should be a mandatory requirement to include the reason for works.
- It would be useful if another category of works could be established that would allow for works which have an urgency to be carried out, although which cannot be arranged immediately for various reasons. This would allow for at least some advance notification of works and assist with co-ordination.
- Currently works go straight to 'in progress' in the SRWR which causes confusion when attempting to carry out 'sample A inspections' as the start date now has to be checked as well as the works status.

6.30 The main reason for **not supporting** the proposal was that it would not fix the problem of misuse of the urgent works classification. Several respondents wrote that experience suggested that abuse of the 'urgent' classification is most likely to occur if a works promoter fails to issue the prescribed notice of start date and seeks to avoid a breach of noticing requirements by misclassifying standard works as urgent. Other reasons that **support was not given** included:

- Sometimes work is urgent but cannot be started immediately, particularly if specialist resources are required. Many of the group two respondents said that while they agreed in principle that works should be noticed on the SRWR as soon as it is known they are required, where specialist resources are required, the earliest opportunity might not be straight away. A planned notice does not cover this situation as the notice period would impose too great a risk (and an early start could not be guaranteed), a minor notice does not cover this either as the duration is too short:

*"... whilst in agreement that these should be a degree of urgency to start any works classed as 'urgent', NJUG would prefer to retain the existing definition of urgent works necessary to repair a primary network failure or restore/prevent a loss of service to customers. There are times when temporary fixes are required which are necessary to return the road to service, whilst securing the necessary specialist apparatus or materials to effect a permanent repair or reinstatement. This doesn't mean works are not urgent, just that the excavation phase may be delayed until the permanent works can take place and be completed without delay."*  
(NJUG)

- It was argued by some that this proposal would give a "perverse incentive" to hold back on placing the notice for known urgent works until the start date and this would undermine the potential for co-ordination.

6.31 **Other suggestions** made by those not supporting this proposal, but offered as an alternative included:

- The introduction of a mandatory requirement to state the reason for works qualifying as urgent on the notice. This could be by selection from a pick list of the prescribed valid reasons.

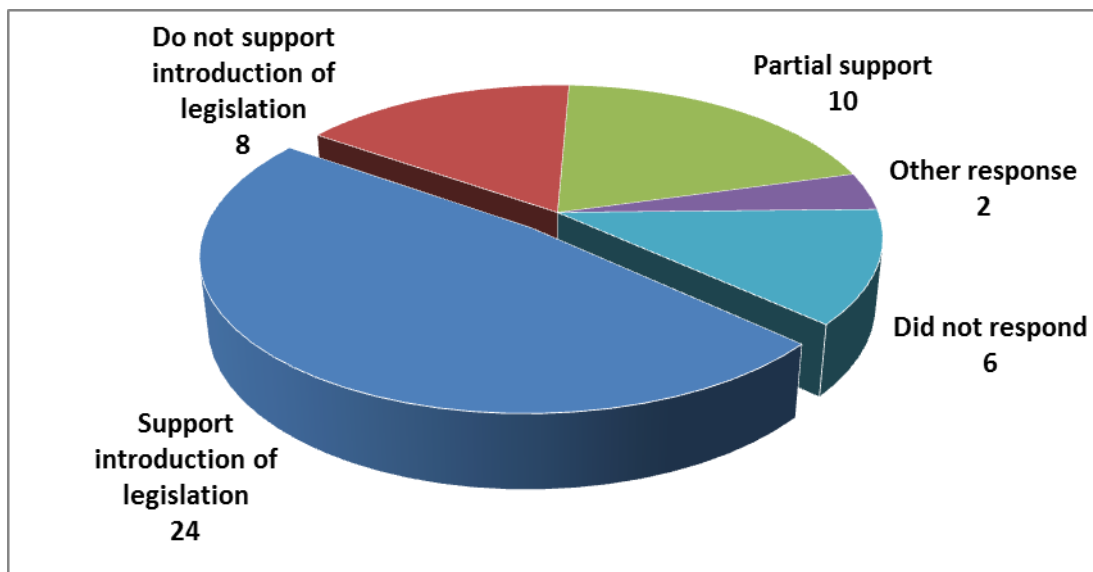
- A planned urgent notice which allows a delay in the start date but does not require a specified notice period. This would allow utilities to give an estimated start date but if the situation changed, they would still be permitted to 'go in' before.
- That the existing definition be retained but that the importance of communicating to the road works authority when actual excavation works are due to start is stressed to all works promoters, and agreement is reached with them on the appropriate course of action (taking into account the impact on safety, practical, operational and disruption issues).

Comparison of group responses

6.32 Of the 19 respondents supporting this proposal, 16 were from group one, two were from group three and one was from group four. Of the 24 disagreeing with this proposal, 11 were from group one and the remainder were group two respondents. Those not stating a position included one from group one and one from group three. Utility companies were more likely to discuss the difficulties in starting urgent work immediately, should specialist resources be required.

Road Authority Noticing Obligations

**Q.22. Should legislation be introduced to ensure that roads authorities are required to provide the same information as utility companies and to the same timescales?**



\* Of the six who did not respond to this question, two were from group one, one was group two and three were from group three.



Key themes
1. The main reasons for supporting the proposals were: ensuring that the fullest and most accurate information is available to the Commissioner; facilitating planning programming and co-ordination of works to the fullest; and achieving parity and equity between both roads authorities and utility companies, i.e. all abiding by the same rules.
2. Despite strong support, there was feeling that the legislation would need to be flexible to allow for different types of works.
3. Those against the proposal felt it unnecessary and bureaucratically burdensome.

6.33 Just under half of respondents (24) expressed outright **support** for the introduction of legislation to ensure that roads authorities are required to provide the same information as utility companies on the SRWR. The **main reasons for supporting** the proposals were:

- Ensuring that the fullest and most accurate information is available to the Commissioner:
 

*“Any proposed legislation would greatly aid co-ordination, enhance co-operation and enable much better data analysis to assess both existing and future legislation and voluntary initiatives. It would make sense for all works to be required to provide the same information to the same timescales. The more information the road works community has at its disposal, the better informed the Commissioner will be in formulating any future road works policy, legislation or direction.”* (BT Openreach)
- Facilitating planning programming and co-ordination of works to the fullest.
- Achieving **parity and equity** between both roads authorities and utility companies, i.e. all abiding by the same rules:
 

*“The duty to populate the Register with full and correct information as quickly as possible should be placed on all those who have cause to enter data into the Register.”* (CPT)

6.34 Feelings that there should be parity between the two groups was expressed not only in relation to noticing obligations, but also around performance management for these issues:

*“...there should also be parity in performance management of these issues including the inspection regimes and reporting of defects on the road and road works authority apparatus such as gullies.”* (Scottish Water)

6.35 The notion that both types of organisation should abide by the same rules was also supported by reasoning that the general public do not differentiate between who is undertaking work. This view was put forward by three respondents (including one roads authority):

*“Indeed, the general public do not differentiate between roads authority and utility works, and so it would make sense for all works to be required to provide the same information to the same timescales.”* (Virgin Media)

*“The public do not differentiate between works and so it is reasonable to apply the consistency through the same rules and penalties.”* (Energy Networks Association)

6.36 A view was also expressed that roads authorities should be **leading by example** and so should therefore abide by the same noticing obligations.

6.37 A total of eight respondents did not agree with the proposals. The main reason that the proposal was **not supported** was because it was considered that it would be bureaucratically and administratively burdensome for roads authorities, and that the time required to place notices for all works would outweigh the benefits of doing so:

*“Any requirement for roads authorities to record reinstatement details would lead to a huge volume of additional work for very little benefit.”* (Clackmannanshire Council)

6.38 **Other reasons** that the proposal was not supported included:

- Perceptions that such legislation would not add any value or assist in the co-ordination of works.
- The fact that the road network is a roads authority asset.
- The fact that the roads authorities and utility companies have different responsibilities and so are not comparable in terms of the volume and nature of demands placed upon them:

*“Roads authorities and utilities should not have to operate in the same way on the Scottish Roads Work Register. Utilities are able to plan works or respond to urgent works for their individual customers, whilst roads authorities are tasked with maintaining the public asset and ensuring public safety whilst using the road network.”* (Perth and Kinross Council)

6.39 There were ten responses which could not be classified as either providing direct support or objection to the proposal, all of which were characterised by the view that the **legislation needs to be flexible**:

*“Where information relates to co-ordination, for example, timing and location of works, then roads authorities and utility companies should be required to place the same information on the Register and to the same timescale. Where information relates to*

*excavations and reinstatements, for example, areas, locations and dates of reinstatements, then it should only be required from the utility companies". (Aberdeenshire Council)*

6.40 While there was support for the same legislation being applied to both bodies for consistency and co-ordination purposes, one respondent recognised that it would be particularly beneficial for minor, standard and major works, but identified that it could be problematic if also applied to small repairs which arise from safety inspections, since they are more unpredictable and hence more difficult to plan and programme. One authority suggested that roads authorities should only be required to close their completed works on the SRWR and not notice the works as well.

6.41 One respondent from group three supported the proposal in principle but suggested that allowances should be made given the current backlog in the road maintenance programme. They suggested that it may be appropriate to reflect this backlog in any legislation and set a **realistic timeframe for introduction**.

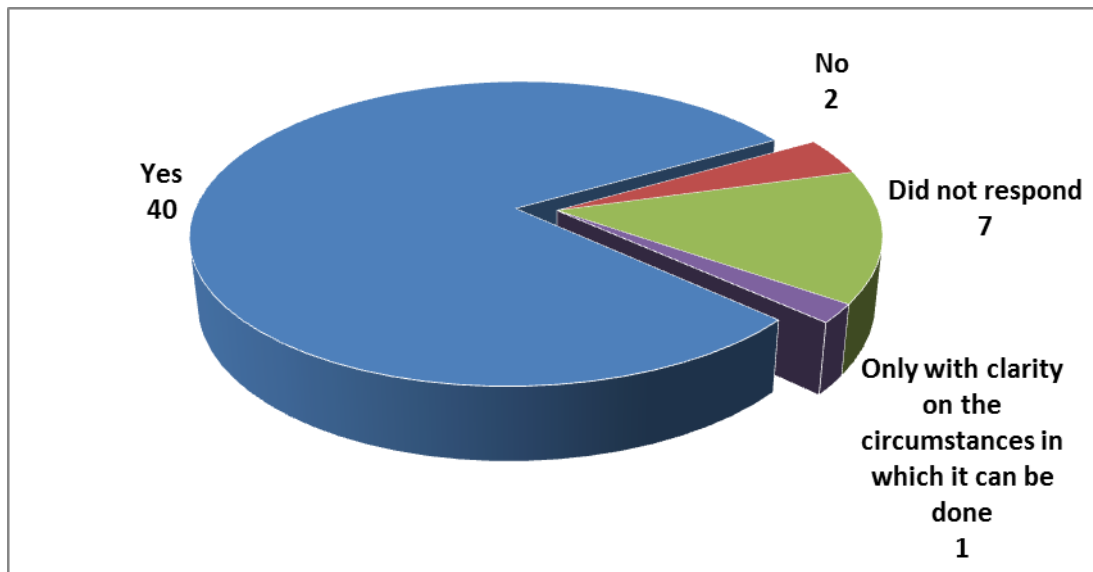
6.42 One respondent queried the purpose of such legislation since it is the roads authority which has the duty of managing and co-ordinating works and should, therefore, by definition, already be aware of works and their state of completion. Another respondent also expressed that there would be no benefit to roads authorities supplying this information to themselves about their own assets. One other respondent expressed the view that, if all works by third parties are correctly noticed, the remaining works could only belong to roads authorities making the need for the Council's own reinstatement details redundant.

#### Comparison of group responses

6.43 There was a broadly even split between groups in terms of support for and against this proposal. Nine of those who offered support were from group one, 12 were from group two and three were 'others'. All eight respondents who disagreed outright with the proposal were from roads authorities and related bodies.

### Minor Works Involving No or Minimal Excavation

**Q.23. Should regulations be introduced to allow roads authorities the flexibility around placing notices for works involving no or minimal excavation on non-traffic sensitive roads?**



\* Of the seven respondents who did not answer this question, two were from group one, one was from group two and four were from group three.

Key themes
1. There was considerable support for the introduction of such regulations to formalise practice that is already widely used.
2. Support for flexibility was backed up by feelings that such works are minimally disruptive, have little impact on the public, and would be administratively burdensome to manage otherwise.
3. While people support the introduction of flexibility, clear guidance is needed on the circumstances in which it can be used.

6.44 All but three of those who provided a response to this question were in favour of regulations being introduced to allow roads authorities the flexibility around placing notices for works involving no or minimal excavation on non-traffic sensitive roads.

6.45 The main reasons given for **supporting** such flexibility were:

- That it is inappropriate to require roads authorities to place notice for works with no or minimal excavation;
- Placing notices for these works does not aid co-ordination in any way;

- These operations cause minimal disruption to the public; and
- Such flexibility would reduce bureaucracy and the administrative burden for roads authorities.

6.46 A specific view was voiced that flexibility with such works would also allow efforts to be concentrated on more disruptive works, which was more appropriate:

*“Vodafone believes that flexibility for works with minimal excavation and non-traffic sensitive roads, means that the administrative focus will be on more disruptive works and therefore roads authorities can take steps to mitigate. Vodafone supports the introduction of such regulations subject to parity with undertakers’ works.” (Vodafone UK)*

6.47 Again, a number of respondents supported **parity of treatment between roads authorities and utilities** in terms of allowing flexibility to “level the playing field”. This is important because, as one respondent explained, “the disruption is the same, regardless of who causes it.”

6.48 Several respondents also expressed the view that existing guidance on this matter was sufficient and already flexible but that regulations would bring a statutory footing to the current advisory arrangements (others liked the idea that it would be **‘formalised’**).

6.49 While most respondents supported the flexibility, and the main reason was that such works caused minimum disruption, one respondent pointed out that even works involving no excavation can cause disruption if they require traffic management.

6.50 Three respondents felt that, although flexibility was needed, there should be **guidance** on what constitutes ‘minimal’ and/or clarity on the circumstances under which this could be done. Guidance was perceived to be important to avoid abuse of the flexibility afforded:

*“Any regulation changes should include direction on the definition of ‘minimal excavation’ as this is open to abuse.” (Stirling Council)*

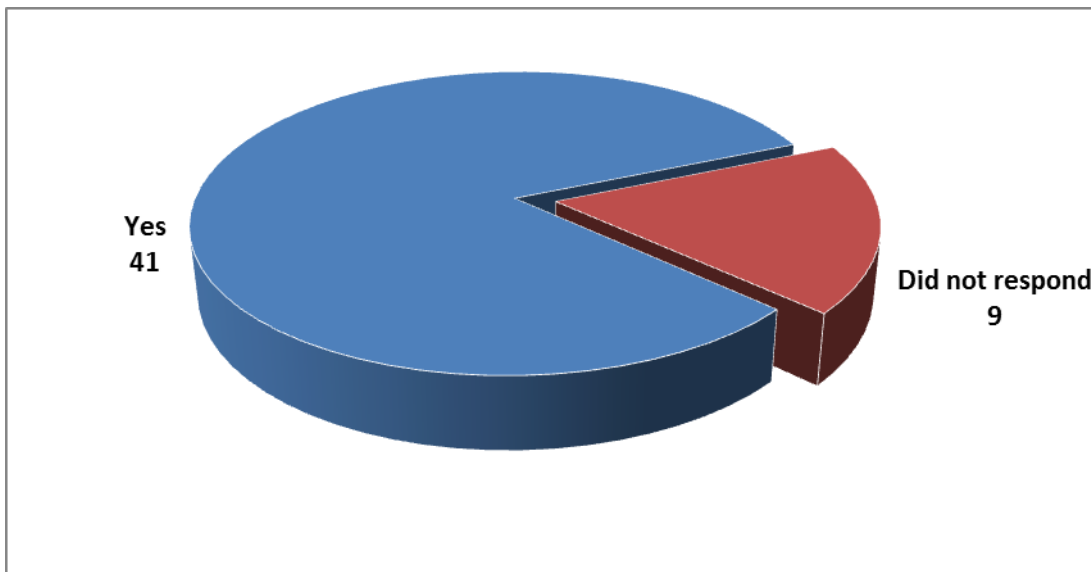
6.51 For those who were **against** the proposal, the main reasons were that all promoters should notify all works on all occasions, for co-ordination purposes and co-operation of works. Introducing flexibility was perceived to remove some of the rigour.

#### Comparison of group responses

6.52 Two thirds of those supporting the introduction of regulations were roads authorities (26) and one third were utility companies (11). Three other responses in support of the introduction of regulations came from ‘other’ respondents. The main reasons given in support did not vary by group. The two responses against the introduction of such regulations both came from group one and the respondent proposing that it would be appropriate only if guidance was issued alongside the introduction of regulations was a utility company.

### Actual Start Notices

**Q.24. Should regulations be introduced to require roads authorities and utility companies to enter actual start notices on to the Scottish Road Works Register?**



\* Of the nine respondents who did not answer this question, two were from group one, two were group two and five were from group three.

Key themes
1. There was considerable support for the introduction of such regulations with a view that it would represent best practice and should be encouraged.
2. The main reasons offered in support were improved co-ordination of works, provision of an audit trail and improving knowledge about who else was working in the vicinity (or was planning to).
3. There was support for penalising non-compliance with such regulations, if it was introduced.

6.53 There was **unanimous support** for regulations to be introduced to require roads authorities and utility companies to enter actual start notices on to the Scottish Road Works Register. All respondents who answered this question provided a supportive response and one expressed that this was a practice that they already encouraged. Another authority felt that it represented “best practice”.

6.54 The main reasons given for **supporting** these regulations were:

- That the regulations would allow for better knowledge and better co-ordination of works;

- Providing greater certainty of who else is working on or in the vicinity, or is planning to and assisting with avoiding disruption with nearby works which may be affected or have an impact elsewhere; and
- Would provide a clear audit trail of the dates of road occupations:

*“This will greatly aid co-ordination of works by road works authorities and management of their road networks, as well as providing greater certainty to utilities of who else is working on or in the vicinity of the road(s) on which they are planning to work or are currently working.” (NJUG)*

6.55 Three respondents (two authorities and one ‘other’ group respondent) explicitly stated that that entering actual start notices should be a statutory or legal requirement with offences for failures to do so dischargeable by a FPN. One authority suggested that users should be penalised if a start notice is issued without works starting and a view was also expressed that the requirement to enter these notices would improve compliance.

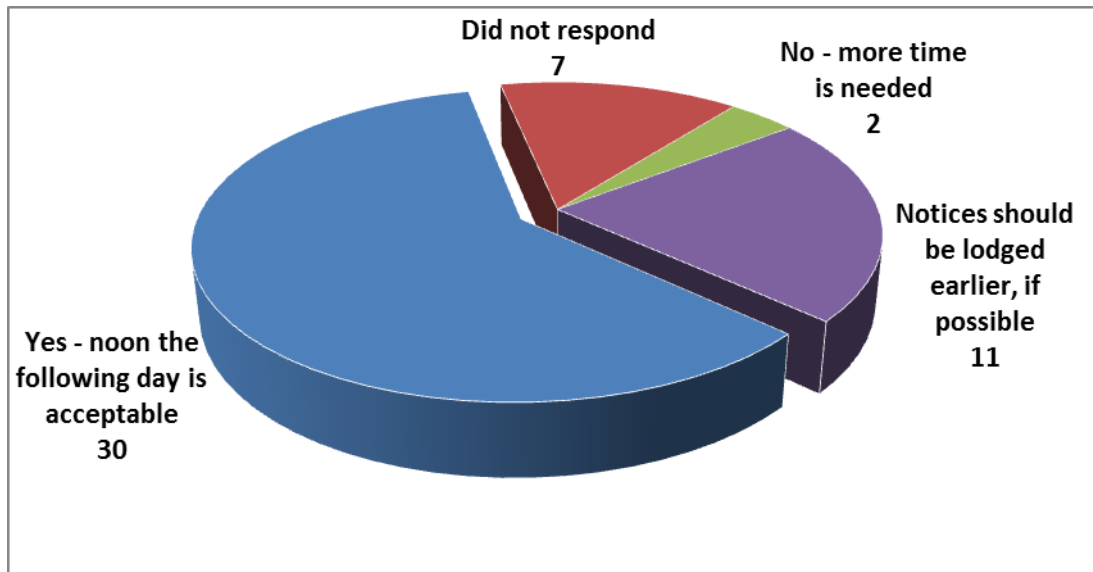
6.56 One respondent suggested that actual start notices will be required if charging for occupation of where work is unreasonably prolonged is introduced.

6.57 One respondent proposed that mandatory actual start notices would greatly assist roads authorities to carry out inspections during the works and would reduce the number of abortive site visits.

#### Comparison of group responses

6.58 Overall, 41 out of the 50 respondents (82%) answered this question and there was no divergence in views offered by the two main respondent groups i.e. all were supportive. Of the nine who did not respond, most were from ‘other’ organisations (two were utility companies and two were roads authorities).

**Q.25. Is the current requirement for actual start notices to be lodged by noon the following day for all works in roads, including traffic sensitive routes, acceptable? Please can you explain your answer.**



\* Of the seven respondents who did not answer this question, two were from group one, one was from group two and four were from group three.

Key themes
1. Responses were mixed with most people either supporting the current requirements, or suggesting that notices could/should be lodged sooner where possible. The consensus was for the most up-to-date information to be available as possible.
2. Existing requirements were seen to be practical, achievable and realistic and be sufficiently generous to allow the most accurate data possible to be entered.
3. Where people expressed a view for longer lodgement periods, this was due to perceived problems in transmitting data from remote areas. This was a minority view.

6.59 Responses to this question were quite mixed, with a large majority supporting the current requirement, but others expressing a view that it needed to be changed, either to allow more time for notices to be lodged or for notices to be lodged sooner.

6.60 Just under one third (30 respondents) agreed that the current requirement for actual start notices to be lodged by 12 noon the following day for all works was acceptable. The main reason given for **agreeing with the current requirement** was that it seemed to work well and was practical, **achievable** and **realistic**, striking a sensible balance between ensuring certainty that the works have commenced and making sure that information on the Register is as up-to-date as possible:



*“The current requirements establish a reasonable achievable timescale. All organisations involved would find it difficult to provide accurate information to a shorter timescale.”*  
(Stirling Council)

6.61 One view **against the earlier notification** was that, given that works can begin at any time of the day, including after 4.30p.m., such works can only be recorded the following day. This was supported by another respondent who pointed out that most offices do not have staff that work nights and so time is needed the following morning to investigate and contact relevant bodies to confirm what works programmes have commenced, and then notice them.

6.62 It is important to note that many of those who supported the *status quo* with regards to registration requirements also expressed that this should not prevent earlier registration, if possible:

*“Of course, the noon next day deadline should act as a backstop and wherever possible all works promoters should aim to confirm the actual start of works as soon as possible, and where they are working in particularly busy roads unexpectedly we would urge them to telephone the road works authority to alert them of their works before submitting the formal actual start notice.”* (South West Water)

6.63 Another respondent explained that they found it acceptable, but acknowledged that “most will do better” and one utility company stressed that, even if the requirements remained the same, “all works promoters should aim to confirm the actual start of works as soon as possible.” A further respondent said that although they supported the current timescales, they would encourage **timeliness especially for traffic sensitive roads**:

*“Vodafone believes the “noon the next day” is appropriate and gives added certainty that the information is correct before it is record on the SRWR. However, on traffic sensitive roads, we encourage timely notices as soon as possible, once the situation on site is confirmed, without regulation being imposed. This will provide clarity on current works on the network and assist with avoiding disruption with nearby works, which may be affected or have an impact elsewhere.”* (Vodafone UK)

6.64 Eleven respondents expressed views in support of notices being lodged sooner, the main reasons being that, for traffic sensitive roads, it would permit better journey planning, especially for bus operators, if notices were lodged the same day. The general feeling was that the current requirement should be strengthened for traffic sensitive routes and a view was put forward that it would be beneficial if the noticing period could reflect the cases of road or high volume flows.

6.65 Two respondents suggested that, although the existing requirements were adequate for most purposes, some flexibility may be needed to accommodate different types of works with periods defined on a **case-by-case basis**:

*“The current requirement is adequate for most purposes. However, there could be a benefit in requiring a higher level of precision in information relating to the most disruptive works.”*

*This might involve earlier registration of the actual start but an alternative might be a notice of proposed start to be placed the previous day.” (Aberdeenshire Council)*

6.66 Where the works involve special engineering difficulty, pre-registering was also put forward as an alternative option.

6.67 Another roads authority agreed that there may be benefit in requiring a higher level of precision of information on the SRWR and suggested that this might involve earlier registration of the actual start by the close of the actual start date.

6.68 A view was also expressed that, given current technology, it should be possible to advise on the day that works start and within two hours of actual starts, allowing exceptions only for urgent and emergency works. Another respondent explained that:

*“Increasingly “real-time” information is now seen as the norm and road users want to know what is happening instantly and accurately. Many agencies and commercial services are engaged in collecting this information and disseminating it to assist in making better use of the road network, reducing congestion and making travel more efficient and enabling the traveller to be better informed e.g. local radio stations, Traffic Scotland etc. It would perhaps be seen as counter-intuitive in today’s electronic information-oriented world to provide and confirm such information almost 24 hours late.” (Strathclyde Partnership for Transport)*

6.69 Only two respondents (both from group two) suggested that the noticing **requirement period needed to be extended**. The main reason was that trying to notice works any sooner was also seen as problematic for remote areas of Scotland where transmission of data is a challenge:

*“Whilst we endeavour to serve actual start notices by noon on the following working day, Scottish Power’s preference would be for actual start notices to be lodged by close on the following working day for all works. The geographical areas across Scotland make it difficult for all the information to be transmitted in these timescales. This would also be in line with the requirements in England.” (Scottish Power)*

6.70 Finally, some respondents also expressed a view against decreasing the time allowed to enter information onto the Register for emergency and urgent works since these often go straight to ‘in progress’ and having to enter information any sooner may lead to incorrect information being placed on the Register just to meet the timescale, rather than inputting the most **accurate information**. Indeed, concerns about the inaccurate entry of information in the event of the introduction of shorter timescales was raised by several respondents. Such responses were slightly misguided, however, since, for emergency and urgent works, the actual start notice is required to be placed either two hours before or after commencement of works depending upon the traffic sensitivity of the road. Although this notice is deemed to be an actual start notice for the purposes

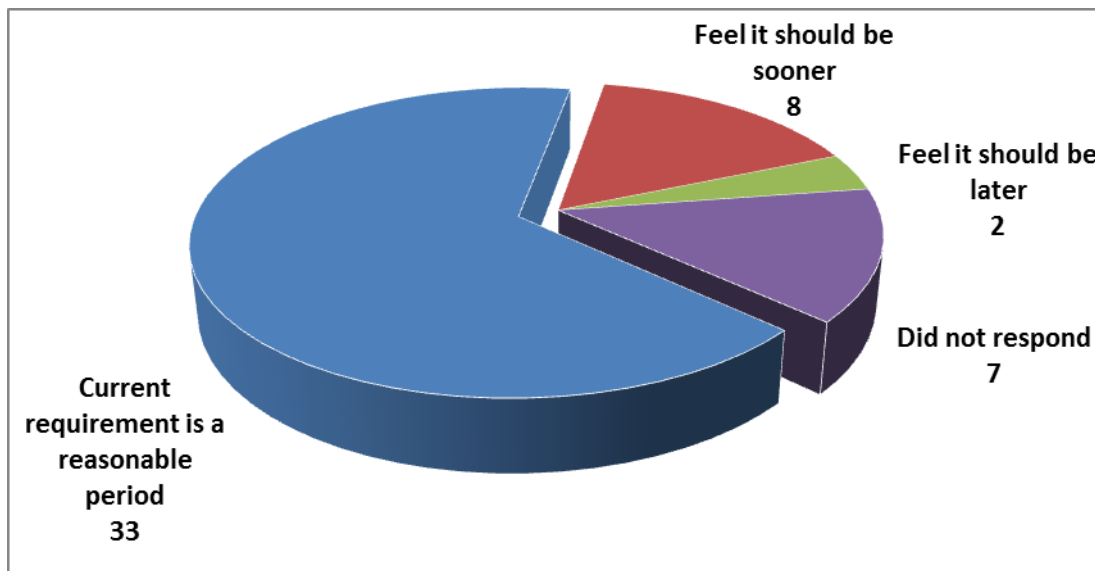
of the Code of Practice for the Co-ordination of Works in Roads, it is legally a S114 Notice of Starting Date or a S116 Emergency Works Notice, so would be unaffected by the proposal to change the time period for giving an actual start.

#### Comparison of group responses

6.71 There was agreement between both utility companies and roads authorities that existing requirements are acceptable. The main differences in group responses was that roads authorities were more likely to support earlier noticing than utility companies. Of those suggesting faster lodging of notices, seven were roads authorities or other public bodies and three were utility companies. Both respondents who suggested that more time was needed (i.e. to convey information from remote areas) were utility companies.

#### Works Closed Notices

**Q.26. Is the current requirement for works closed notices to be lodged by the end of the next working day a reasonable period? What alternative period would you propose for traffic sensitive roads and what are the advantages or disadvantages?**



\* Of the seven respondents who did not answer this question, one was from group one, two were from group two and four were from group three.

Key themes
1. Overall, the current requirements were seen as satisfactory and were perceived to work well and be realistic and achievable for all.
2. Many respondents would like to see works closed notices lodged as soon as possible, and ahead of the end of the next working day. Suggestions for alternative time periods included noon the next day or by the end of the same day.
3. Only two people expressed a view for longer lodgement periods, and this was again due to perceived problems in transmitting data from remote areas as well as to allow supervisors to carry out their work effectively.

6.72 The majority of respondents (33) felt that the current requirement for works closed notices to be lodged by the end of the next working day was a **reasonable period**.

6.73 Many of the reasons cited in support of the current requirement were similar to those offered for start notices (i.e. existing arrangements are perceived to work well and are realistic and achievable for all). The view was that the works closed notices were less critical than starts, because they effectively reduce potential delays and problems rather than increasing them.

6.74 While the current arrangement was seen as working well, some **improvements** were suggested, again similar to those put forward for start notices, including possible benefits in requiring a higher level of precision of information relating to the most disruptive works, or for work on strategic roads:

*“There may be a benefit in requiring a greater accuracy of the information that is provided. This is especially important for the most disruptive works being carried out or for work on a strategic road. Registering a ‘works closed’, i.e. the road is now open, on the day of completion of such works, might be more appropriate. This would allow for better co-ordination of the road network and allow roads authorities to notify customers of changes and an end to delays.” (City of Edinburgh Council)*

6.75 Again, several respondents expressed the view that information should not be issued any later and, in practice, may be impossible to achieve any earlier. The end of the next day should perhaps be seen as a backstop, with encouragement of **earlier lodgement wherever possible**.

6.76 One respondent suggested that, while existing time requirements were satisfactory, works closed notices should be notified directly to the Network Manager.

6.77 Overall, eight respondents suggest that works closed notices **should and could be lodged sooner**, the most popular time frame being the **end of the same working day**. One authority suggested that a more appropriate timeframe would be noon the following day, and another respondent suggested ‘real time’ closure is something that should be considered in the future:

*“Would suggest lodge by noon the following day for all roads. For traffic sensitive streets Dumfries and Galloway Council approach is for close contact with utilities, to allow reversion to normal operation to be carried out quickly when works complete”. (Dumfries and Galloway Council)*

6.78 The main reasons offered for preferring a **quicker period for lodging works closed notices** were:

- Earlier notices would allow consideration of another application to use the road space; and
- In high traffic sensitive areas, it may be very useful to know exactly when works are closed due to the adverse effects they may have on normal traffic routes.

6.79 Another respondent expressed the view that, while the existing timescales were appropriate and did not need amending for traffic sensitive roads, there may be benefit in earlier notice if the network was busy/in demand among those waiting to do works:

*“Vodafone believes that the existing requirement for works closed notices to be received by the end of the following day is acceptable and does not need amendment for traffic-sensitive roads. However, where the network is busy and other promoters are waiting for space to commence their works, it is recognised that a works closed notice as soon as practicable would aid co-ordination.” (Vodafone UK)*

6.80 Others also welcomed improvements that could be made to providing information earlier for areas of high volume traffic and asserted that it would be beneficial if **noticing periods could reflect the class of road or traffic flow**.

6.81 Another respondent highlighted the value of earlier notice periods for road users as justification for more timely lodging of notices:

*“If a bus company has built in a lot of extra time into a route because they’re expecting to face congestion due to road works only to find out that the road works have unexpectedly closed early then the route will likely run faster than scheduled. This puts the bus company at risk of early running and could see them brought in front of the Traffic Commissioner to explain their failure to run to time. Given the relative ease in updating the SRWR and the fact that it will likely be possible for the utility company or local authority to gauge how ongoing works are progressing, CPT would like to see works closed notices lodged within at least half a day of works closing. However, as mentioned before, CPT’s preference remains that utility companies and local authorities input accurate start and finish dates into the SRWR before road works commence and then keep to those predicted dates.” (CPT)*

6.82 While some people suggested the speedier entry of works closed notices, it was recognised that the disadvantage may be in the **administrative burden** that it would place on the organisation to raise the notice. Others recognised that some roads authorities have difficulty in closing works during local public holidays and so some flexibility in the process may be needed.

6.83 As with start notices, some respondents suggested that current technology should be explored to encourage the use of hand-held devices to enable notification of works by operatives/supervisors on site, making it as timeous as possible. Overall, the view was that the closure of works could potentially be expedited more quickly, mitigating disputes within other sections of NRSWA.

6.84 Only two respondents suggested a **longer time frame** for lodging works closed notices. Again, the main arguments put forward for later lodgement were the fact that works can be completed at any time of the day, including after working hours (in which case they would need to be lodged the next morning) and problems with transmission of data in remote areas of Scotland which may delay the process.

6.85 One respondent also expressed that the current deadline was too restrictive in terms of works supervision:

*“No – the period is too short and does not allow for peripatetic supervisors to carry out their duties efficiently or effectively. A period of two working days is a more realistic requirement.”* (Perth and Kinross Council)

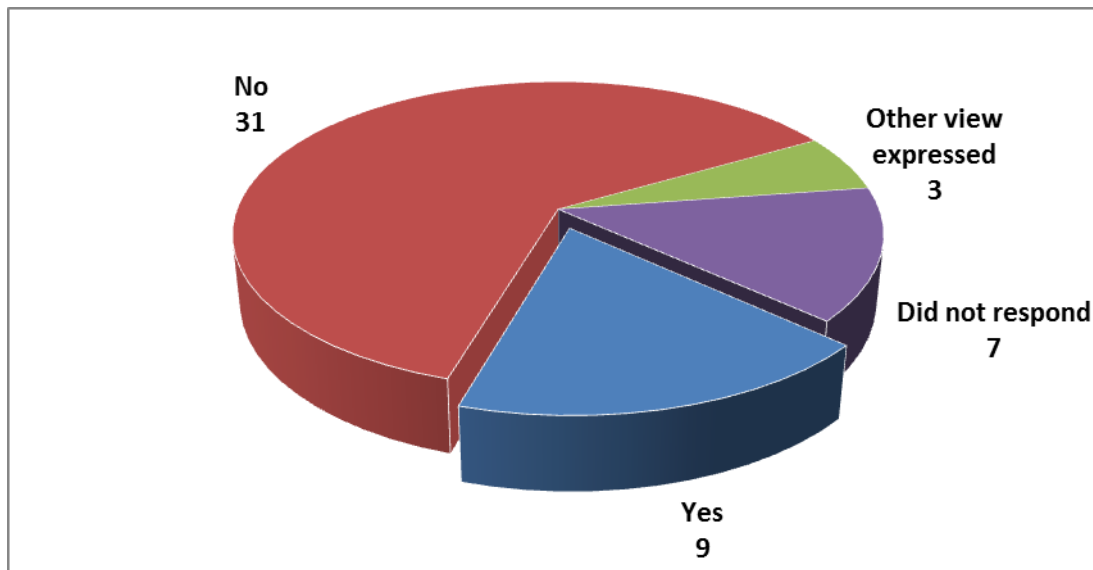
6.86 An element of flexibility regarding delay was also called for by one respondent in the event of unforeseen circumstances. A two hour extension window was proposed for such exceptions but it was acknowledged that this would need to be carefully policed to prevent organisations from circumventing the original deadline.

#### Comparison of group responses

6.87 The majority of those in both groups one and two supported current requirements and there were no notable differences in the justifications given by group. Of the two people who suggested longer periods for lodging notices, one was from group one and one was from group two.

## Validity Periods

**Q.27. Should we reduce the validity period to a maximum of two days and should it apply to both utility companies and roads authorities alike? If you consider that a different validity period would be appropriate, please state the period and provide the reasons for your view.**



\* Of the seven respondents who did not answer this question, two were from group one, one was from group two and four were from group three.

### **Key themes**

1. Most respondents were in favour of leaving the validity periods as they are at present, the main reason being that they afford flexibility in the case of unanticipated delays to start of works.
2. The main reasons given in support of the reduction of the validity period to a maximum of two days were to assist in co-ordination of works with more accuracy in relation to actual start dates.
3. Respondents supported the idea that utilities and roads works authorities should be treated the same with regards to validity periods.

6.88 This question produced some relatively lengthy and detailed responses, compared to other sections of the consultation.

6.89 Overall, respondents agreed that the validity periods should be the same for utilities and roads authorities.

6.90 Most respondents (31) felt that the **existing validity periods should remain the same**. The main reasons for this were:

- That the existing periods allowed flexibility for all parties in the case of slippage. This is important because some works are delayed due to unforeseen circumstances (e.g. bad

weather) or as a result of delays in earlier scheduled works. Operational and/or customer reasons were also cited for potential delays of a few days along with emergency or urgent works, plant failure, reinstatement material availability in the event of unexpected works, parked vehicles and difficult site conditions.

- Reducing the validity period to two days may have a negative impact on staff resources and clog up the SRWR with potential changes required whereas the current system allows flexibility.
- To give allowance for investigatory works, identifying defects as well as providing flexibility for plant and labour resources.
- The benefits of reducing the period would be outweighed by an increase in noticing activity.
- To meet customer expectations and deliver works effectively.
- Reducing validity periods will cause additional noticing problems and may increase late starts, cancelled notices and new notices with requests for early starts.
- Reducing the period would have a direct impact on cost.

6.91 Views were also expressed that there was **no evidence** to suggest that existing periods were at all problematic:

*“No evidence has been provided that the current validity periods are causing delays or other issues with co-ordination of road works. The Scottish Road Works Register allows for self co-ordination through highlighting potential conflicts between works at the proposed works stage.”* (Scottish Water)

6.92 Two respondents also expressed that current periods reflected the **reality of carrying out road works**:

*“The validity period allows utilities (and road works authorities) to re-arrange work schedules at short notice which is the reality of carrying out road works, and some flexibility is necessary to allow for slippage, without which there would be a need to issue new notices, which would be administratively onerous and potentially confusing for road works authorities receiving them.”* (Virgin Media)

6.93 Some respondents who were against the two day period did agree that the period could perhaps be reduced ‘slightly’, although no specific suggestions for timescales were given. Two respondents suggested that durations should be mutually agreed and, wherever possible, bespoke noticing should be utilised.

6.94 Some authorities suggested that flexibility be built in for the most disruptive works, in line with comments made about start notices above:



*“Roads authorities and utility companies both require a degree of flexibility in scheduling works in order to deploy their resources effectively. Works involving investigating and correcting a problem are often unpredictable in duration and some works are weather dependent. The current validity periods allow for this flexibility and should be retained for most works. However, there could be a benefit in requiring a higher level of precision for the most disruptive works...this could take the form of a requirement to input a firm start date one day in advance of the works.” (Aberdeenshire Council)*

6.95 One respondent expressed the view that problems with co-ordination that arise as a result of the current seven day flexibility should be redundant if ‘actual start’ notices are compulsory.

6.96 Among those who **supported the reduction of the validity period** to a maximum of two days, the main reason given for their support was to assist in co-ordination of works with more accuracy in relation to actual start dates:

*“We believe that the validity period should be reduced to a maximum period of two days. If an authority is trying to co-ordinate a number of different works from different works promoters over a period of time and everyone required seven days delay to their works it would be very difficult to achieve.” (BT Openreach)*

6.97 One respondent representing an ‘other’ organisation suggested that the period should be shortened to reflect improvements in communication technology and thus the two day period seemed appropriate.

6.98 One authority who supported the suggested two day period suggested that the proposed statutory requirement to record the actual start date would have to be in effect to make it workable and the FPN scheme could be applied to organisations that do not start on the day in the notice. This may encourage behaviour change by all organisations.

6.99 Finally, among those supporting the two day period, respondents still pointed out that some degree of flexibility may be needed. One respondent explained that they would support the proposal as long as it referred to two ‘**working days**’ and as long as some flexibility was also built in when considering performance reports to allow for problems such as weather conditions affecting works – this would need to be recorded on the notice.

6.100 One respondent provided a response which could not be easily classified but suggested that the flexibility afforded to both utilities and roads authorities under the validity period was not fair for the travelling public, regardless of the timescale:

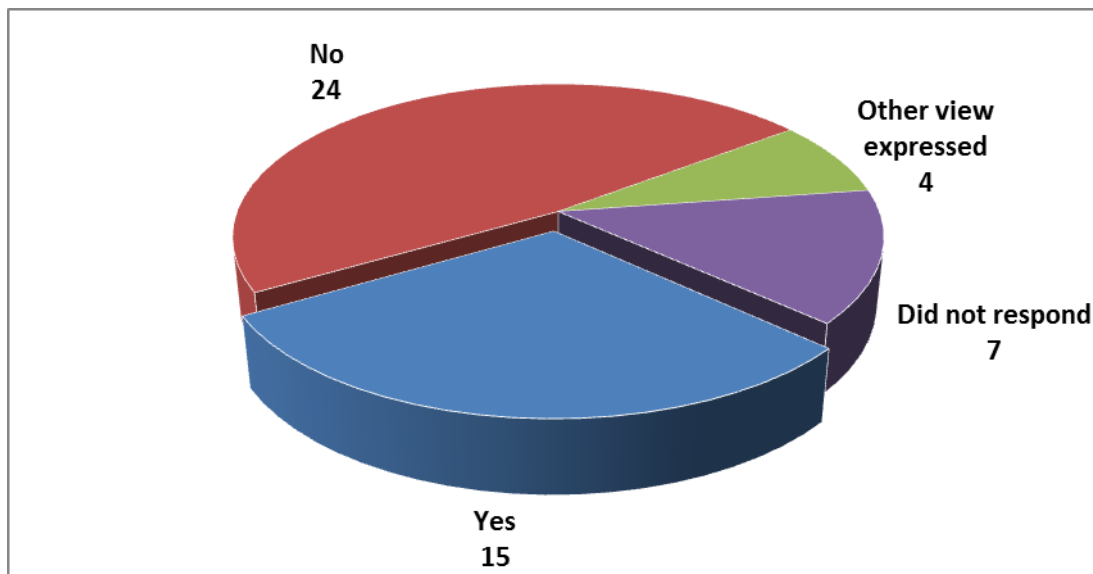
*“Allowing for road works to shift their start date - by giving utility companies and roads authorities a validity period of seven days or even just one day - undoes all previous planning. The consultation should better consider the needs of the travelling public against the desire of utility companies and roads authorities to have the freedom to begin road works as and when they wish.” (CPT)*

### Comparison of group responses

6.101 Between all groups, the most common response was to support retaining existing seven day validity periods. Of the 31 respondents who supported the current period, 20 were from group one and 11 were from group two. Roads authorities were slightly more likely to support a reduction in the period to two days (six of the nine people who supported the reduction represented roads authorities compared to one utility company and two 'other' respondents).

### Duration of Works

**Q.28. Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?**



\* Of the seven respondents who did not answer this question, three were from group one, one was from group two and three were from group three.

Key themes
1. There was a notable split in views both in support and against this proposal. Most of those supporting statutory powers to impose maximum durations for works on utility companies were roads authorities.
2. Strong views were expressed by utility companies that only they possessed the requisite technical skills, knowledge and experience to be able to appropriately gauge durations required for works.
3. Several respondents felt that New Roads and Street Works Act (NRSWA) Section 115 already adequately covers this issue. Therefore, it was proposed that greater penalties should exist for ignoring NRSWA Section 115 directions, rather than allowing roads authorities to dictate the duration of utility companies' works.

6.102 Overall, 43 out of the 50 respondents (86%) answered this question and there was a clear difference in responses by group. Most of those supporting statutory powers to impose maximum durations for works on utility companies were roads authorities, although those against the proposals were split evenly between groups.

6.103 The main reasons given in **support** of this proposal were:

- That it would allow better control over the booking of road space for effectively minor works.
- Enhanced powers may reduce some of the current disruption that can be caused to traffic by major road closures where work is not complete.
- Works needs to be effectively assessed beforehand and maximum times set by the local authority to ensure that road possession and the associated disruption is minimised.

6.104 Among those who supported the proposal, views about its likely success were somewhat **tentative**. Respondents suggested that it would be **difficult to challenge** utility companies and **difficult to assess** the utilities work content.

6.105 Several respondents who supported the proposal (as well as some who did not) pointed out that the New Roads and Street Works Act (NRSWA) Section 115 already adequately covers this issue. Therefore, it was proposed that greater penalties should exist for ignoring NRSWA Section 115 directions, rather than allowing roads authorities to dictate the duration of utility companies' works. Another respondent pointed out that very few directions have been issued under current powers relating to the timing of works and so it is likely that such matters will continue to be resolved by agreement in most cases.

6.106 Of the 24 respondents who **did not support** the proposal, 12 were from roads authorities and 12 were represented utilities. The main reasons given against the proposal were:

- That the roads authorities do not possess the technical knowledge to assess whether utility works can be reasonably completed within an imposed duration.
- Utility companies are best placed and more experienced to determine the required duration based on networks, customers, engineering difficulty, commercial constraints, etc. in collaboration with the contractor.
- Lack of technical knowledge among roads authorities may lead to a situation where utility companies are working longer hours/overnight working through unrealistic timescales, compromising health and safety, etc., which would go against the principles of co-ordination and accountability.

- It is better to complete works within the programmed duration than having a dispute when the utility company fails to complete work by a date imposed on them by the roads authority.
- Undue pressure to reduce durations to an unsustainable level with the imposition from road works authorities of ‘maximum periods within which works must be completed’ could potentially lead to **decreased safety and quality** and the need to return at a later date, effectively increasing overall works durations.

*“Vodafone and our contractors understand our business and therefore should be able to determine work durations to ensure prompt delivery of service and to ensure reinstatement quality. Pressures from roads authorities to reduce durations may affect quality and result in remedial works visits at a later date. However, early discussions with our construction teams are encouraged where works are likely to be more disruptive, to find ways of work to lessen that risk. We believe that roads authorities should not be given extra powers for duration challenges.” (Vodafone)*

6.107 Feelings were expressed that agreeing durations should be part of the initial discussion with utility companies as part of co-ordination and co-operation and any issues should be resolved through negotiation, as is the case at present:

*“This should be done through discussion where there are specific problems, however, if charging for occupation where work is unreasonably prolonged is introduced, then authorities may get the opportunity to challenge durations. Also, powers exist to ensure that works are carried out with all such dispatch as is reasonably practical.” (JAG UK)*

6.108 Two respondents suggested that the duration of works would be **better controlled by lane rental**, as long as the lane rental costs reflect the value of the road to the travelling public i.e. higher costs for strategic roads.

6.109 **Other responses** included that:

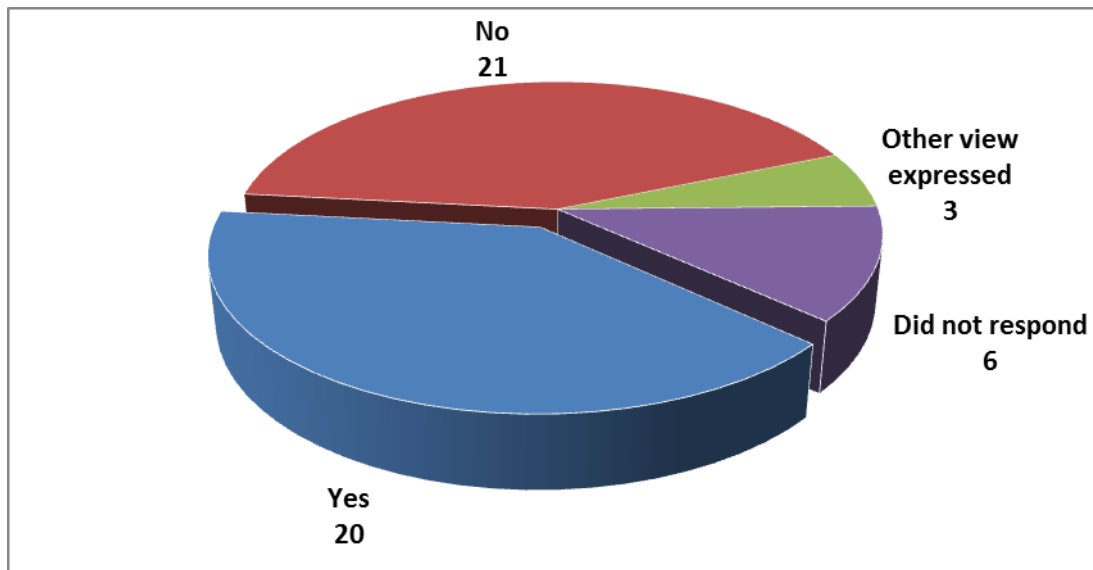
- Durations dictated by roads authorities would only be suitable for a specific reason (e.g. works created in conflict with other works; over-run conflicting with an event like a parade; over-run conflicting with Roads (Scotland) Act 1984 occupation.)
- Statutory powers would not be necessary in rural areas but could significantly improve works times in city centres or on busy bus routes where disruption is multiplied by not utilising weekend working, etc.
- It would be beneficial if the Commissioner could monitor the duration periods of notice types and confirm if it is acceptable to put 14 or 21 days for everything.

### Comparison of group responses

6.110 This question produced a clear split in opinion between groups with all those offering strong support for the proposal representing roads authorities and related bodies. Although those against the proposal were split evenly between utility companies and authorities (12 in each case), the strongest views against the introduction of regulations were proffered by utility companies.

### Embargoes

**Q.29. Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?**



\* Of the six respondents who did not answer this question, one was from group one, one was from group two and two were from group three.

Key themes
1. All of those who supported the proposal were respondents from roads authorities and related bodies. There was no support for the statutory introduction of embargoes among utility companies and related organisations.
2. Those who supported the introduction of statutory powers in this regard felt that it would formalise a voluntary system that was already working well.
3. Most of those against the introduction of statutory powers in this regard also felt that the present voluntary system was working well and so did not need a statutory footing.

6.111 This question was well answered with 44 out of the 50 respondents (88%) providing a response. The issue again provided a clear split in responses between groups with 18 of the 20 respondents who supported the proposal representing roads authorities and related bodies. The

remaining two respondents who supported the proposal were 'other' organisations/individuals. This means that none of the utility companies and related organisations who responded supported the introduction of statutory power to impose embargoes on works for reasons other than traffic disruption.

6.112 Among those who **supported** the introduction of statutory powers in this regard, the following reasons were offered:

- Statutory powers would permit **more control** for authorities over important local community and civic events which are important in the community. It is important that such events have access to the road asset;
- It would seem **common sense** to channel non-essential road works into periods where traffic is likely to be reduced (and statutory powers would allow for this);
- Councils should have powers to direct that major works be avoided during the peak tourist season; and
- Statutory powers would introduce a formal process to signify embargoes.

6.113 One respondent expressed the view that the introduction of statutory powers would **remove any areas of ambiguity** and stressed that the introduction was timely given a preference for greater use of road spaces to host local events in rural areas:

*“This would clarify any grey areas where roads authority officers may feel uncomfortable dealing with voluntary agreements for embargoes that relate to certain events. Particularly relevant as the road becomes increasingly the venue of choice for many ‘community’ events.”* (Shetland Islands Council)

6.114 The introduction of statutory powers for such embargoes was also welcomed in the capital city, given the large volume of events that it hosts:

*“Major sporting events, major venue concerts, Festival/Fringe, Hogmanay, visits by VIPs, long planned charity events, marches and protests etc., have the potential to be seriously disrupted by utility works. Such events also use the road asset and are an important for the communities that Councils serve. Especially in the Capital City, and being the seat of the Scottish Parliament. The City of Edinburgh Council believe that the current voluntary agreements should be regularised and roads authorities given statutory powers to impose embargoes on utility works.”* (City of Edinburgh Council)

6.115 One respondent expressed a view that, if introduced, it would be useful if a facility could be provided on the Register to log embargoes.

6.116 It is important to note that, among those who supported the introduction of statutory powers in this regard, there was still acknowledgement that the current system works well. Many also stressed that their support was dependent on powers being used in a reasonable and justified way.

6.117 Among those who did **not support** the introduction of statutory powers for embargoes, the main reasons given were that:

- The present voluntary system **gives more flexibility**;
- Utility companies already work well under the current voluntary system with the local authority to avoid disrupting special events/accommodate (since no one wants the associated negative publicity that would be associated with disrupting high profile events). **Current levels of co-operation are good** and the current arrangements for voluntary embargoes works well provided that the responsible authority consults all parties, including strategic authorities, in good time:

*“NJUG’s strong preference would be for road works authorities and utilities to continue to, or start to share plans of major works and upcoming events in order to facilitate planned voluntary embargoes on roads when necessary. The road works community has a long and proud track record in managing the flexing of works, and complying with voluntary embargoes...NJUG believes that this should continue without the need for embargoes to be placed on statutory footing.” (NJUG)*

- It would be difficult to set down in statute a **definitive list of circumstances** where embargoes on works would be appropriate.
- Such embargoes may conflict with regulatory requirements that are set out to give enhanced value to utilities customers:

*“We do not agree. Embargoes are given currently and we strive to comply with the requirements. However, Scottish Power has a duty to comply with our statutory obligations so imposing embargoes could restrict our works. The consultation does not provide any justification or analysis to substantiate providing roads authorities with the statutory powers to impose embargoes on works for reasons other than traffic disruption.” (Scottish Power Energy Networks)*

6.118 Several respondents queried the economic reasons set out for the possible introduction of such embargoes and were keen to stress the **potentially negative economic consequences** to utilities if too many embargoes were imposed:

*“Utilities undertake road works for four main reasons – safety, security of supply, connecting new customers or enhancing existing customers’ supplies, or diverting apparatus for major transport or urban regeneration projects. Utilities are investing billions of pounds to deliver safe and secure utility services which underpin the UK economy. They are therefore a major contributor to economic growth in their own right and through providing essential utility services for new houses and businesses. Therefore, having statutory powers to impose*

*embargoes on utility works could have very significant negative consequences.” (South West Water)*

6.119 Four respondents explained that they were not aware of voluntary embargoes not being adhered to and suggested that there was no evidence that they had not been, therefore making them question the need for statutory power i.e. there is no evidence to justify changing a well-established arrangement.

6.120 Among utility companies, therefore, it seems that there is a preference for roads authorities and utilities to continue to share plans and work together to avoid the need for statutory powers being imposed.

6.121 Only three respondents provided ‘other’ responses to this questions. One suggested that any additional powers would need to be clarified (and so did not provide a statement in support or against), one respondent suggested that, while the idea was welcomed in principle, there would be challenges in achieving the correct balance of exemptions, e.g. emergency/urgent works where the system could be bypassed. The third respondent set out some of the perceived complexities of imposing such embargoes:

*“This issue is complex in that the current voluntary system works well and is flexible enough to allow it to work. Major sporting events, community and charity events all have the potential to be impacted by utility works. These events have a strong community influence and must be considered as appropriate. Legislative imposition of a definitive list of embargo circumstances may be too prescriptive.” (North Lanarkshire Council)*

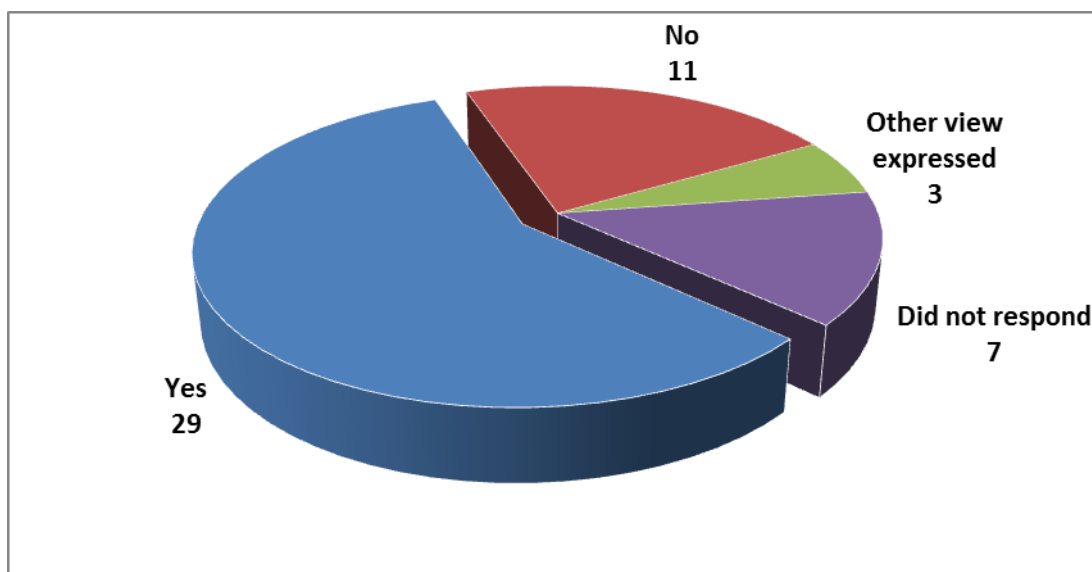
#### Comparison of group responses

6.122 As discussed above, there was a clear divide of opinion between those in group one and those in group two with regards to the introduction of statutory powers to impose embargoes on works for reasons other than traffic disruption. There was no support for this introduction among any of the utility companies or related bodies who responded.



### Definition of “working day”

Q.30. Do you agree with the definition of a working day given above?



\* Of the seven respondents who did not answer this question, two were from group one, one was from group two and four were from group three.

Key themes
1. More than half of respondents supported the definition on the basis that it was clear, relevant and locally appropriate.
2. The main reason for not agreeing with the definition was that respondents felt that the definition of working day in Section 157(2) of NRSWA was already satisfactory, with a definition of bank holiday exclusions.
3. The large majority of those who agreed with the definition were representing authorities (24 out of 29 who agreed) and the majority of those who did not agree were representing utilities (eight out of the 11 who did not agree).

6.123 The consultation document set out a proposed revised definition of ‘working day’ as follows:

*“Working day (regulation 2(1) of SI 2008 No88), which is a day other than a Saturday, Sunday or the public holidays for Christmas Day, Boxing Day, New Year’s Day and the day following New Year’s Day; and a notice given after 16:30 on a working day is to be treated as given on the next working day.”*

6.124 Over half of those who responded to this question (58%) supported the proposed new definition of a working day given in the consultation. The main reasons given in **support of the definition** were that it is clear, allows greater flexibility and reflects Scottish circumstances, taking cognisance of local trade holidays.

6.125 Those who **did not support** the definition, provided the following reasons:

- The definition of working day in Section 157(2) of NRSWA should stand as it is, with a definition of bank holiday exclusions;
- It does not take into account local public holidays which are not recognised by the Register and cause issues with recording notices; and
- It affects the statistics for compliance of noticing if a notice is late because of public holidays, etc. There should be the capacity within the SRWR to input the local holidays of each organisation, or at least have the failures caused by such events removed from the statistics.

6.126 Two respondents who opposed the definition questioned the evidence to support the statement that ‘many organisations now do not take bank holidays’, (paragraph 5.27 of the consultation document).

6.127 **Other responses**, each offered by one respondent, were:

- Restricting the time for a notice to be given to 16:30 to count as that working day appears to be unnecessarily restrictive and will continue to cause potential Fixed Penalty Notices in the Scottish Road Works Register with no way of managing this to maintain compliance.
- Many organisations will work up to and beyond 17:00 and in order to reach 16:30 peripatetic supervisors may lose valuable site time by returning to the office early. It was suggested that the working day should extend to, say, 19:00 hours.
- The definition should be extended to include Good Friday, Easter Monday and May Day, assuming that these are ‘standard’ public holidays for the vast majority of roads authority staff, at least. Consideration should also be given to the possibility of the Commissioner (perhaps on instruction from Scottish Ministers) being able to add “events” to the ‘standard’ non-working days (e.g. Queen’s Jubilee, Royal Weddings, state funerals).

#### Comparison of group responses

6.128 A large majority, 43 out of the 50 respondents (86%), answered this question and most of those who did not were from ‘other’ organisations. The large majority of those who agreed with the definition were representing authorities (24 out of 29 who agreed) and the majority of those who did not agree were representing utilities (eight out of the 11 who did not agree).

### **Summary of Co-ordination of Works**

6.129 The consultation questions around roads works co-ordination generated much discussion and there were several cases where clear disparity between roads authorities and utility companies were

observed. In many cases, respondents felt that parity should be sought between both groups, especially around information provision and the placing of notices. Flexibility, improved coordination and better planning seem to be key themes across the section, and ensuring availability of up-to-date and accurate information is something that all parties seem keen to achieve.

## **7. OTHER ISSUES**

7.1 This final section sought views on issues not specifically raised elsewhere in the consultation. This is a common format for consultation documents, and allowed for comments to be made on management of road works, innovations and potential financial costs associated with various consultation proposals.

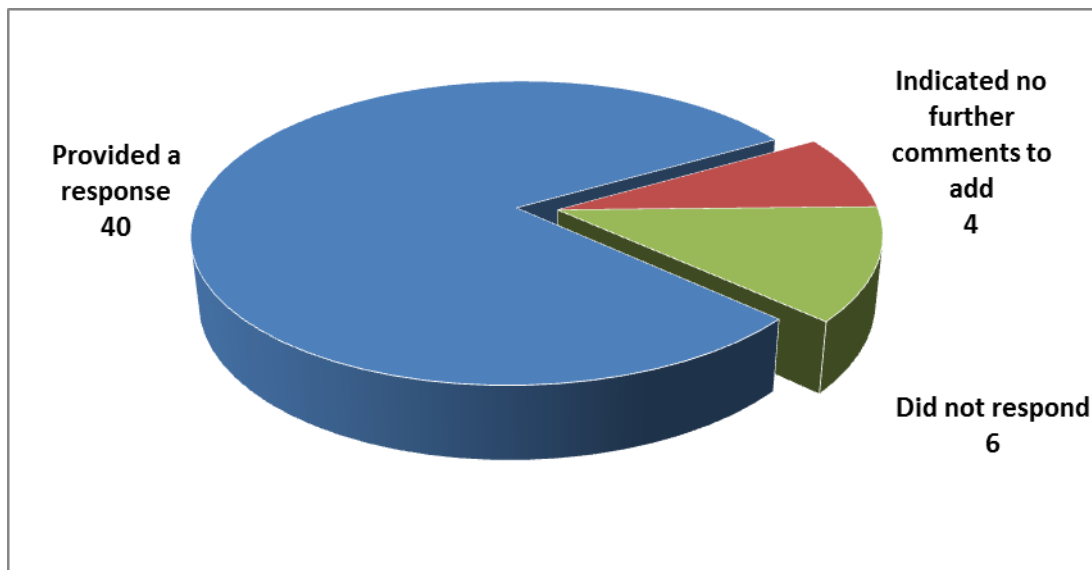
### **Background**

7.2 The first question invited respondents to identify issues relating to the way in which road works are managed and undertaken that had not been covered elsewhere in the consultation. For example, comments on existing ways of working, as well as any perceived limitations with existing legislation or documented processes. A second, more specific question sought views on any potential innovations in works on roads that could contribute to improving the way in which works are managed and provided an opportunity for respondents to flag examples of good practice. The final question invited feedback on any potential additional costs associated with any of the proposals outlined in the consultation, should they be introduced.

7.3 Unlike other areas of the consultation, responses offered to these three final questions were quite disparate and could not be easily clustered into common themes. This section therefore presents a number of different issues, some of which were raised by single respondents and thus may not necessarily be generalisable between groups or across the wider Scottish road works community.

## Findings

### Q.31. Issues Not Covered In The Foregoing



\* Of the six respondents who did not provide a response to this question, three were from group one, one was from group two and two were from group three.

7.4 A total of 40 separate responses were provided to this question. Four respondents specifically stated that they had no comments/views or issues to add and the remaining six indicated that a response was either 'not applicable' or provided no information at all.

7.5 A large number of respondents used question 31 to comment on **road works policy and other regulations**, often with the theme that there appear to be confusing messages set out in the various guidance and statutes governing how road works operate. In particular, a view was expressed that the policy regulating road works on Scottish roads should dovetail better with the Scottish Government's wider strategic aims. As such, the aims of road works policy should look to allow for the upkeep of utilities and road surfaces while minimising disruption, rather than the disruption element being an afterthought:

*"More effective and consistent use of the myriad of existing legislation and regulation will deliver the Scottish Government's objectives of improved standards and reduced disruption, without impacting on growth or unnecessarily pushing up utility consumers' bills or prices for connection."* (Virgin Media)

7.6 A number of comments related to the possible **review or amendment of sections of the New Roads and Street Works Act (NRSWA)**, including:

- That consideration should be given to removal and replacement of Sections 132A, 132B, 132C, 132D and 137A, with wording to positively encourage utilities to trench-share and co-ordinate works with roads authorities surfacing programmes.

- There should be compatibility between (or at least a recognition of the significance of the difference between) notice periods under NRSWA and the statutory notice periods for road closures, which may be longer.
- Change in the timescale for giving direction under Section 115 since the current timings are too short.

7.7 Three respondents commented that **Section 56 of the Roads (Scotland) Act 1984** should also be incorporated into NRSWA. It is currently missing from NRSWA and can be issued for significant road works which do not involve installation of apparatus e.g. a new road junction or construction of a roundabout. Another respondent suggested that the legislation required to be amended to clarify that the **definition of apparatus** within all Codes of Practice includes all underground plant such as pipes, cables and ducts (not just surface ironwork and access chambers). One respondent expressed that utility companies should be required to carry out coring programmes to demonstrate compliance with the Specification for the Reinstatement of Openings in Roads (SROR), which would drive improvements in the quality of reinstatements, it was perceived.

7.8 Other comments were provided regarding the possible **review of Codes of Practice and Advice Notes** to ensure that they are fit for purpose, including:

- A review of Advice Note 18. The procedure is influenced by the hearing body, made up of authority representatives, and there is currently no recourse for appeal, leaving issues unresolved (mentioned by four respondents, all from group two); and
- A review of the Code of Practice for Dispute Resolution and Appeals which allows for disputes related to failed inspections to be heard by a panel drawn from the Area RAUCs and RAUC(S). Again, currently, where agreement cannot be reached between the co-chairs, or the decision is not accepted by both parties, there is no further recourse to resolve these disputes:

*“Openreach believe there is a need to review the Code of Practice for Dispute Resolution and Appeals as neither the straightforward procedure (first stage) nor the escalation procedure (second stage) results in concluding the dispute or appeal. Openreach also feel there is an opportunity to review Advice Note 18, (procedure for the conduct of hearings under NRSWA 1991 and The Roads (Scotland) Act 1984) as the procedure is heavily influenced by the hearing body, which is wholly made up of authority representatives, and gives no rights to appeal.” (Openreach)*

7.9 Other areas of potential **conflict in guidance** were identified as inconsistencies between SROR and the Disability Discrimination Act (DDA) guidance with regards to tolerances for trips on footways and the need for a review of the Road Works (Qualifications of Supervisors and Operatives) (Scotland) Regulations to ensure consistent training and accreditation standards throughout the UK for operatives and supervisors working on roads.

7.10 Another theme covered in several responses to this question was **inspections**. All such comments were made by roads authority respondents and included:

- A Code of Practice similar to the Code of Practice for Well Maintained Highways for utilities to inspect their reinstatements up to the end of guarantee period and their apparatus on a regular basis would be welcomed. At present, there appears to be no inspection regime other than a reliance on roads authorities to report defects to the utility. A formalised Code of Practice with inspection timescales would ensure reinstatements and apparatus was inspected and maintained, therefore reducing defects and the necessity for urgent and emergency works (the same response was offered by two separate roads authority respondents).
- Utility companies should be required to inspect their works and the works of their contractors and record these inspections on the SRWR.
- There should be guidance issued to the utilities as to the inspection regimes that should be carried out to monitor their own contractors. At present it seems that the utilities are relying on the general public or the roads authorities to bring substandard reinstatement/traffic control etc. to their attention.
- There is no requirement for utility companies to regularly inspect their apparatus under S.140. They can simply rely on roads authority safety inspections to notify them of defects. However, due to the lack of inspections, roads authorities are also having to respond to third party enquiries relating to these defects. Currently, the Code of Practice only allows inspection fees to be charged should the roads authority encounter a high risk defect. The defect inspection process for apparatus should mirror that for failed reinstatements allowing roads authorities to recover costs for carrying out all repeat defect inspections of utilities' apparatus. This would help encourage early attention to reported apparatus defects.
- All roads authorities' follow-up DA2 inspections, carried out when a utility has failed to repair their defective apparatus within the agreed timescales, should be rechargeable to the utility.
- The defect inspection process for apparatus should mirror that for reinstatements and allow further chargeable inspections to be undertaken to ensure remedial work is carried out within a reasonable timescale. Legislation should be changed to allow a fee for any defects discovered.
- With regards to signing, lighting and guarding of road works, utility companies should be required to carry out daily checks on open sites. Some utility companies already undertake this practice but others can leave sites unchecked for weeks at a time. Similarly follow-up inspections to signing, lighting and guarding failures should be chargeable.

7.11 Several respondents also raised **issues relating to contractors** employed by utilities companies to undertake and manage their works. The main issues were:

- Utility companies continually change contractors to maintain lower costs. It often falls to the roads authorities to supervise these contractors on site with a number of utility companies paying no attention to quality at the time of the works. All utility companies must be required

to carry out some quality monitoring of their own contractors on site and record the results of these inspections on the SRWR.

- Several of the national utility companies now employ external contractors to manage and undertake road works on their behalf. This type of contract management setup can lead to utilities abdicating their duties under road works legislation resulting in works noticing problems, poor site supervision and inadequate site traffic management.

7.12 Some respondents used question 31 to provide further **feedback regarding the Scottish Road Works Register (SRWR)**. This included the following observations:

- The SRWR is not currently working to its full potential as a tool to allow bus and coach operators to monitor road works that may affect their services, and minimise disruption encountered by passengers. The first step toward improving the Register is to place a statutory responsibility on all those tasked with populating the SRWR with the most up-to-date and accurate information available, to update it in a timely manner and to do their utmost to work to the dates in place.
- Additional fields may be required in the system to cover all traffic management such as convoy working:

*“When works are not registered at the time of completion, it should be the statutory undertaker’s duty to prove the date of the reinstatement. A photograph, taken at the time of the reinstatement, could be deemed sufficient. It would have to be date stamped and show a near-by landmark. If evidence of the date is not available, the reinstatement date, for guarantee purposes, should be the date it is entered into the SRWR.”* (West Lothian Council)

7.13 Some comments were also made to reinforce the importance of **accurate reporting times**, especially in the case of urgent and emergency works:

- In situations where utility companies require to undertake urgent works, these are typically notified for a period of one week. Often the repairs are carried out within two to three days and there is then usually a period of a few days where no works are undertaken before the reinstatement is completed. The period of time where no works are being carried out between completion of the repair and completion of the reinstatement should be addressed. It would be useful if another category of works could be established that would allow for works which have an urgency to be carried out, which cannot be arranged immediately for various reasons (e.g. lack of resources or complex traffic management requirements). This would allow for at least some advance notification of works and assist with co-ordination.
- Further control is required over the works periods. Expected end dates need to be tightened up and failures to meet these dates (without agreed extensions) should be offences dischargeable by FPN:

*“Further control is required over the works periods. Notification of expected end dates need to be tightened up and failures to meet these dates (without agreed extensions) should be an offence subject to a FPN. There should also be a specific penalty for failing to repair*



*defective work within a reasonable time in addition to the current system where the reinstatement is repaired by the roads authority on a rechargeable basis.” (Stirling Council)*

- Actual starts, late or no extensions (where the notice expires before being closed), registration information and not entering reinstatement details should all be FPNs. This would drive the provision of this information by providing an incentive to do so.

7.14 One respondent representing a rural roads authority also requested flexibility in some of the **noticing of major works**, to accommodate the fact that, in rural areas, even some relatively minor works can expand and take over two weeks. In such cases, the need to follow the same noticing procedures as, say, Glasgow and Edinburgh seems unnecessary.

7.15 One respondent requested including **details of works duration on Information Boards**, alongside the existing requirement to name the organisation carrying out the work and a telephone number for emergency contact. Another respondent suggested erection of signs informing the public of the reasons for delays and a requirement for constant updates to the site notice board showing the reasons why any site is not currently being worked on, as well as the estimated start and end dates.

7.16 A number of comments shared the theme of **fees/costs and fines**, although these all related to different technical areas, as follows:

- A review of the Prescribed Fees regulations so that there is parity in the application of the fees in terms of overall usage of the SRWR, not just against the number of notices served.
- Changing the existing situation wherein roads authorities are responsible for the majority of the diversionary costs for replacing utility apparatus when the structure is replaced.
- Changing the need for roads authorities to pay for the utility companies’ detailed diversion scheme costs and estimates, as the balance of costs is completely in favour of the utilities.
- A specific penalty for failing to repair defective work within a reasonable time in addition to the current system where the reinstatement is repaired by the roads authority on a rechargeable basis.
- As the requirement to enter site dimensions is not supported in legislation (best practice only) any scheme where the roads authority is compensated on a m<sup>2</sup> basis is subject to the provision of that information by the utility. There is no method for a roads authority to provide that information on behalf of the utility, therefore the information must be provided, accurately, by the utility. As there is no legal requirement to do so, nor any penalty for not doing so, it could be considered that there is a financial benefit to not providing the information, even if dealt with as a Commissioner penalty. Therefore, providing registration information must be backed in legislation, and must have a suitable penalty for non-provision.

7.17 Several respondents provided brief comments regarding **joints/stepped joints**:

- Two respondents (both roads authorities) indicated that band sealing and step all joints would improve the longevity of utility reinstatements.
- Another roads authority suggested that stepped joints for **all** reinstatements should be mandatory. This would help to seal the underlying areas to water ingress which has a detrimental effect on the road, it was felt.
- One respondent (from group one) indicated that they would like to see a review of the specification for vertical joints and sealing of joints.
- Two respondents (also from group one) indicated that they would like stepped joints for all reinstatements to be mandatory.
- One respondent asked that any report published that relates to road works should stress the importance of sealing the joints to prevent the ingress of water into the construction layers. Stepped joints should be required as standard and not just on type one and two roads.

7.18 One respondent made a specific appeal for full panel reinstatements to preserve the road structure and one respondent expressed that the current reinstatement standards in the SROR do not encourage effective reinstatements and that interface cracking tolerances within SROR are not fit for purpose. The same respondent also supported that stepped joints should be required as standard.

7.19 Perhaps reflecting their organisational origins, some respondents used question 31 to present messages around green travel and the role that road works disruption may play in discouraging **modal shift** to public transport. Suggestions for improvements included:

- Not all passengers can easily transfer their boarding/alighting point for a variety of reasons. Diversionary routes must be realistic in terms of bus operation but should also have a specific requirement to meet the needs of passengers, especially those passengers who have special requirements.
- Improvements to pedestrian/cyclist facilities/routes during the works e.g. clear routes, suitable widths, provision for disabled users and clear routes for cyclists.
- Ensuring safety of all users, particularly vulnerable road users such as those travelling by bicycle or on foot, is paramount. As such, the safety for vulnerable road users must be considered throughout the process, from notification through the works and on to inspection of the reinstatement and throughout the guarantee period. This includes appropriate finishing of road works that may not have an impact on motor vehicle users, but have a huge impact on those travelling by bike. For example, resurfacing around access hatches that, when reinstated, result in the cover not being flush with the carriageway creates a dangerous hazard for those on a bicycle.

- Specific consideration of notification for key cycling and walking routes, taking cognisance of how best to relay information to those cycling and walking. This may differ from current methods of notification. Any works taking place on a designated cycle network (e.g. the NCN or designated local authority network) or Core Path should consider a well-signed diversionary route that is safe and as direct as possible for those on bicycle or foot:

*“It is important that cycling routes (particularly cycle paths and segregated infrastructure) due to undergo works are treated in the same fashion as on-carriageway road works, complete with a process ensuring proper notification, diversion and reinstatement in place and subject to the same requirements for contributions, inspections, guarantees, charges, etc.” (Cycling Scotland)*

*“National and local government, alongside bus and coach operators, are investing heavily in encouraging modal shift and making the bus a reliable alternative to the car. This work should not be undermined by a lax approach to regulating road works. As with many other policy areas, it would seem that communication and co-operation is key to the process and should occur at the outset of planned road works. Stakeholders such as bus companies should be informed and be able to feed back their views on the potential impacts of planned works. It should not be regarded as acceptable for utility companies and roads authorities to operate within a silo. Doing so will only increase congestion and emissions levels and turn people away from public transport use.” (CPT)*

7.20 SPT put forward several comments around ensuring that appropriate consideration is always given to the type of road and type of users likely to be affected by road works along any one specific route e.g. Is it a major bus route or freight route? What is the volume of buses/patronage and freight demand? Are there viable alternative routes? Is it an appropriate time of year for works? Is night-working more/most appropriate?:

*“The primary consideration for SPT is disruption to public transport and impacts on the wider economy, including freight, and community – on people commuting, attending health appointments, accessing education, retail, leisure and recreation. The impact is not necessarily restricted to the particular road affected but is often felt more widely.” (SPT)*

7.21 Only four respondents put forward specific proposals for **trials and pilots of different initiatives**, or made comments about trials and innovations at question 31, as follows (NB: more comments in this regard were offered in response to question 32):

- Pilot projects whereby bus operators receive free access to the SRWR in exchange for providing feedback to the areas where the SRWR needs to be updated or altered in order to make it a useful tool for minimising disruption to public transport;
- Implementation of long term strategies for material sourcing of high amenity area specialist surfaces (e.g. laid as part of landscaping projects in inner cities). Supplies are often needed in small quantities with long lead times. A holding stock held in regional areas for all to procure may drive down lead times and improve availability; and

- Exploration and trialling of innovative materials and working methods should be supported by the road works community. There should be the opportunity to record trials on the SRWR, promoting such techniques nationally and across the road works community:

*“New innovations are always being introduced and are to be welcomed. The City of Edinburgh Council believe that trialling any new method is essential, to determine performance, durability and the long term effect the new methods have on the roads and pavements. It is suggested that prior to any new method or innovation being adopted for use by an organisation, a specification should be written and issued for agreement, to RAUC(S), by the organisation introducing a new method of working. This means that, when organisations try to get agreements from individual roads authorities the specification should be capable of use by others.” (City of Edinburgh Council)*

7.22 Other comments were perhaps best classified as being generally supportive comments with regards to the future co-ordination of roads works, e.g. the drive for further co-ordination and collaboration involving all road works organisations should continue with the shared aim of safely and effectively reducing road occupation:

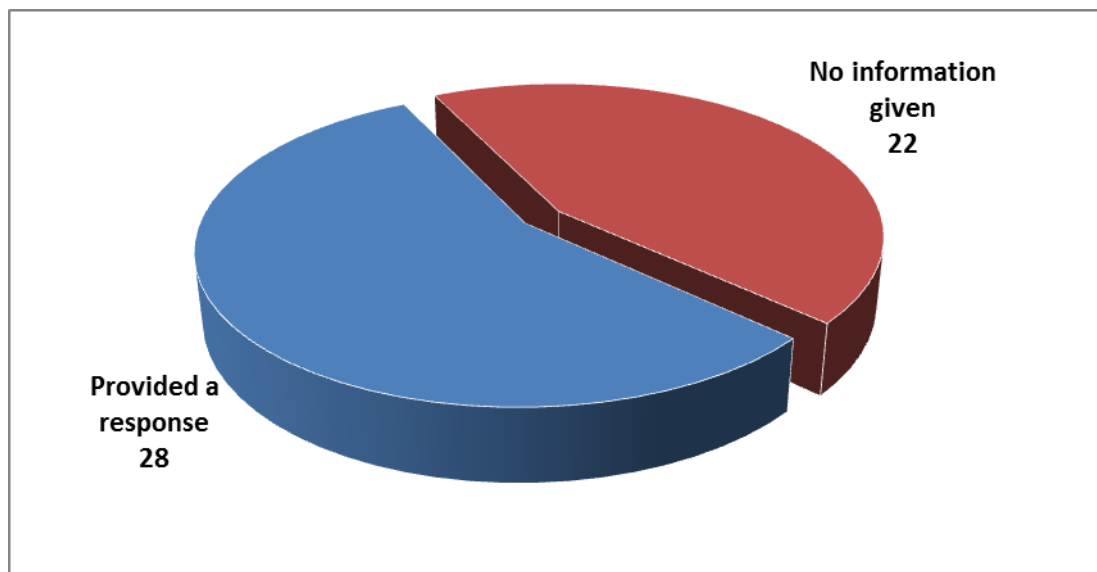
*“NJUG’s firm view is that the greatest benefits in terms of driving up standards and reducing disruption can be achieved by road works authorities and utilities working together to co-ordinate works and thereby reduce the number of overall days occupation, as well as continuing the very positive collaborative approach under RAUC (Scotland), working with the Commissioner, to drive up standards.” (NJUG)*

7.23 Two respondents (both utility companies) stated again that they welcomed the application of existing legislation and regulations to roads authorities to bring parity of treatment and further enhance the collaborative approach of RAUC (Scotland) and the same two respondents stated that the HAUC (UK) and RAUC (Scotland) codes of practice for road and street works were excellent vehicles for enhancing road works in Scotland.

7.24 Finally, three respondents (all roads authorities) commented that they had found the current consultation very comprehensive and therefore had no further issues to note.

## Potential Innovations

**Q.32. Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.**



7.25 Just over half of all respondents answered this question, however, not all of those provided suggestions for potential innovations, as asked. Four respondents provided 'other' comments which may have been better given at question 31. These included:

- The need for utility companies to review time spent supervising reinstatements (group one respondent);
- Stepped joints for all reinstatements should be mandatory (group one respondent); and
- The introduction of FPNs for specific instances of non-compliance with actual starts, late or no extensions and registration information, as required. Specific penalties for failing to repair defective works within a reasonable time was also suggested (mentioned by two group one respondents).

7.26 Of the 24 respondents who provided suggestions for potential innovations, the ideas were quite diverse and could not be readily themed. Several respondents also offered more than one idea. The following list shows all ideas that were offered, and the group from which the respondents came:

- Incentives provided for utility companies to trench share (group one);
- Better use of mobile IT kits would be useful when considering the inspection and registration process. A multi-platform national system (i.e. windows, android, linux, mac) or secure App for inspections that would fully integrate with the Register would provide real time information to all users (group one);

- Trenchless technologies; micro tooling; vacuum excavations etc. These techniques are welcomed and should be used on a more widespread basis (group one);
- Methods of permanently identifying the responsible utility for reinstatements on site (group one);
- Acceptance by utilities of readily available instruments to non-destructively measure reinstatement thickness (group one);
- The durability of joints in reinstatements is a recurring problem and the use of stepped joints in pavement layers should be considered. Alternatively the use of a chamfered joint rather than the current single vertical joint would produce a tighter joint that was easier to paint with emulsion prior to surfacing (group one);
- One system that records road works instead of Traffic Scotland and Symology operating different systems. The trunk road operators have to update and operate both these systems which is double work for the same result and so find a way to link both systems where only one input of road works is required would be beneficial (group one);
- Reversed routes in morning and evening peaks if appropriate (group three);
- Properly and interactively staffed sites to deal with traffic implications (group three);
- Role of police to supervise traffic management (group three);
- Greater use of predictive modelling to permit “what-if?” scenarios (group three);
- Potential roll out of the ‘keyhole surgery’ road works technique being pioneered by Scotland Gas Networks (SGN) in Glasgow (group three);
- Greater use of current technology to give accurate grid references of reinstatements and use this as part of input to Vault (group one);
- Move towards Construction Consents being submitted electronically and for the information therein to be uploaded directly to Vault (group one);
- For urban/high footfall locations, an easy way of recording of specialised surface course and depths would be of value for costing and supply of reinstatement materials in advance of site works (group one);
- Recording layer depths on the SRWR on non-trunk roads, to assist in reducing disagreements over reinstatements (group one); and
- For all drawings associated with major works to be attached to the notice (group one).

7.27 One respondent suggested that **changes to primary legislation** were required to move towards utilities taking more responsibility for the consequences of their work and said that this could be the most significant and innovative contribution towards the way in which works in roads are managed and undertaken (similar to sentiments expressed at question 31):

*“The current joint roads authority/undertaker working arrangements, whereby the utility companies can virtually veto any significant changes, does not work. There is an over reliance on an abundance of Advice Notes and Codes of Practice, due primarily to a lack of clear and concise primary or secondary legislation.”* (Stirling Council)

7.28 Some respondents proposed more general suggested improvements, rather than specific innovations, these being:

- Agreement on methods to measure the adequacy of trench backfill. Poor backfill rather than poor surface course reinstatement is responsible for the majority of cases of settlement and long term damage (group one); and
- Potential to minimise the future disruption from utility works when planning new developments, by addressing this under planning or road construction consent legislation (mentioned by two respondents, both from group one).

7.29 Cycling Scotland also put forward a proposal for a traffic management pilot, as follows:

*“For longer term and larger, programmed work e.g., large scale utility works or road resurfacing/reinstatement, there is an opportunity to take advantage of an alteration of traffic flows to test reallocation of road space and alternative traffic management techniques. For example, if a lane is taken out by utility works, the route could be designated for cycling and walking only, with a diversion made for vehicular traffic. This could allow for testing of potential reallocation of road space and traffic management for the short term – similar to a ‘pilot’ – and would assist in assessing any impacts on general traffic flows and accessibility across the wider area.”* (Cycling Scotland)

7.30 Two respondents also mentioned innovative practices/techniques that they were already aware of being used beyond the UK. The first related to a precast concrete manhole surround, 150mm in width, to reduce failures in ironwork in the carriageway. These are common in the US, it was suggested, where after excavation and backfill, the asphalt should be planed out 300mm on either side of the trench, and reinstated with full depth asphalt, compacted in layers. When excavations are made within 1200mm of other excavations or kerbs, the full width of asphalt should be planed and reinstated.

7.31 The second non-UK example of innovation related to identification of reinstatements:

*“In France, reinstatements have a date/utility code “stamped” into the surface. The letters are about 50mm high and appear to have been imprinted using some sort of “branding iron”*

*(indent is about 5mm). It is therefore easy to identify at a glance when the reinstatement was undertaken and by whom.” (Dumfries and Galloway Council)*

7.32 Three respondents (all from group one) also commented that they found the proposals under Section 1 of the consultation to be very innovative *“continuing the approach of the Scottish roads and utilities community in leading the way for others to follow.”* This supported many of the additional comments provided to question 31 above:

*“We consider the proposals under Section 1 of this consultation to be innovative and appropriate. Income from these charges will support the efforts of councils and the Scottish Government and help improve condition of the Road Network.” (Argyll and Bute Council)*

7.33 Several of the utility companies highlighted that NJUG encourages its members to demonstrate new innovations within the industry through its **Annual NJUG Awards**. The Awards attract submissions across six categories and entries are judged by an expert independent panel. All of the award winning case studies can be found on the NJUG website as examples of the road works sector delivering innovative practice in the ways road works are managed and undertaken.

7.34 NJUG also promotes innovation from suppliers who provide goods, services, materials or equipment that support one or more of the NJUG Vision for Street Works, by the creation of NJUG Affiliates. Affiliates can present innovations at Regional NJUG Street Works Fora held around Great Britain, and at NJUG Good Practice Workshops.

7.35 A general theme across responses was the need for constant **effective communication** between members of the road works community, and one roads authority provided an example of how regular communication was aiding their local practice:

*“In Ayrshire the three Councils meet together with Scottish Water every three months outwith the cycle of local RAUC meetings to discuss road works issues. This meeting is beneficial to both the roads authorities and Scottish Water. Holding similar meetings with the other major utility companies would be beneficial to managing road works in South Ayrshire.” (South Ayrshire Council)*

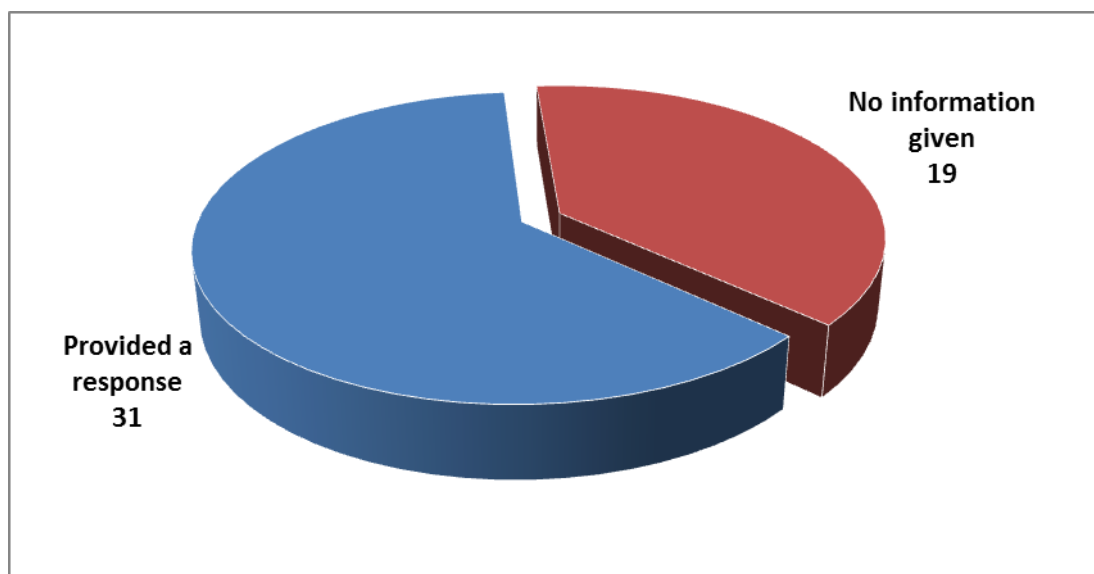
7.36 One final respondent (from group one) expressed that they would just welcome the implementation of responses that had been offered as part of the consultation and one respondent (from group two) again highlighted the importance of collaborative working for the future success of roads works management and operation and for optimal service delivery:

*“Vodafone believes that collaboration between the undertakers and roads authorities is the key to management of the network. Close communication between undertakers and authorities, their acceptance of each other’s needs to maintain networks and give service, is of the utmost of importance to keep efficient traffic movement on the roads and keeps commerce thriving. Where appropriate, working together in partnership where schemes conflict, sends a message to the wider public that the road community is not just an industry on its own, but provides a service to all.” (Vodafone UK)*



## Financial Implications

**Q.33. Please outline the potential impact of any additional costs.**



7.37 Only 31 out of the 50 respondents (62%) answered this question. Of those who did not, nine were roads authorities, five were utility companies and five were 'other organisations'.

Key themes
1. The majority of respondents found it difficult to accurately quantify or make comment on the likely costs associated with proposals outlined in the consultation. This was due to the breadth of issues covered and the limited timeframe in which to undertake a detailed costs analysis, as well as due to ambiguity around which proposal may be taken forward.
2. The contribution to costs of making good long term damage to roads by utility companies was unanimously welcomed by roads authorities as a positive economic move for the public purse.
3. The view on contribution costs from utility companies was that it would negatively impact on services provided to customers and have a negative impact on local economic growth.

7.38 The single biggest additional cost mentioned by roads authorities was the need for an **increased staff resource**, in particular administrative support, if all of the proposed measures in the consultation were introduced. Estimates of the extent of what would be required ranged quite considerably from a staffing increase of 100% of three full time posts to more conservative estimates i.e. 'modest administrative costs' for database management. In essence, more funding would be needed, it was suggested, by roads authorities for additional staff to manage and monitor any additional statutory duties resulting from the consultation, as well as, potentially, **additional IT equipment** obtained to provide digital information to the SRWR, both handheld and desktop. The

absence of additional funding, and the need for redeployment of staff/budgets was described as having negative impacts in terms of service delivery. At a minimum, it was suggested, any proposals implemented need to be **cost neutral** for roads authorities since the current climate of reducing budgets means that roads authorities would have difficulties in absorbing any additional costs resulting from legislative changes.

7.39 There was a large degree of commonality in responses from roads authorities that most costs could be **absorbed by practices and procedures already in place**, with the main impact being the increased volume of work for staff. There was consensus that roads authorities budgets are already stretched with no option to pass on costs to customers (unlike utility companies) and thus the public purse would be required to finance any notable changes.

7.40 Both roads authorities and utility companies mentioned the transfer of some of the **cost of the making good long term damage** to roads arising from utility excavations (covered in Section 1 of the consultation).

7.41 A unanimous view was put forward by **roads authority** respondents that this transfer of **contribution costs** should give an economic benefit to society as a whole as it would drive the innovations necessary to reduce the need for future excavations. If the contributions for utility companies were introduced, this would also potentially free up some of this stream of funding to make better use of staff time and technology within roads authorities. This was welcomed by all roads authorities respondents as a means of reducing the financial burden on roads authorities.

7.42 The view from **utility companies** on contribution costs was that any introduction of a contribution towards long-term damage would not only increase the unit cost of works dramatically, but would reduce the volume of asset investment works utilities companies would be able to undertake within their regulatory settlements, the cost of implementing Scottish Government initiatives such as high-speed broadband, and the cost of new connections for businesses and domestic customers. This will have a significant negative impact on economic growth, jobs and the Scottish economy, it was suggested. Despite perceptions among some authorities that these costs could be passed on to consumers, views were expressed by utilities that increased operating costs cannot be recovered in a sector with low margins and extended payment periods.

7.43 For utility companies, the main theme in responses was that it was **not possible to quantify or accurately estimate the likely impact on costs of the proposals** outlined in the short term, and that detailed cost analysis was required before considering taking forward the various proposals discussed (as well as potentially exploring in more detail the research that had informed some of the proposals):

*“NJUG is unable to accurately quantify the costs of many of the proposals included in this consultation, as the costs would vary widely depending on the scope and scale of the eventual proposals and the way in which they are implemented.” (NJUG)*

*“It is not possible to quantify the true cost of the additional costs at this juncture as there is insufficient data to allow for meaningful analysis to be undertaken.”* (Energy Networks Association)

7.44 One utility company estimated that the proposals, including contributions to long term damage, could total several million pounds per annum, and another provided an estimate in the range of £1m-£6m, depending on the percentage applied.

7.45 In essence, the scope and breadth of proposals covered in the consultation mean that it was not possible for utility companies to cost accurately within the timeframe allowed by the consultation, but this was something that was urged before any proposals were introduced:

*“Before introducing any further measures NJUG urges the Scottish Government to undertake a robust cost-benefit analysis of any areas they wish to consider further, including with input from utilities and roads authorities, as well as working with the Scottish Road Works Commissioner and RAUC (Scotland) in continuing the already in place programme of improvement.”* (NJUG)

*“We would urge the government to undertake a robust cost benefit analysis and empirical research is carried out before imposing any of the proposals.”* (Energy Networks Association)

*“Vodafone believes there are wide options for Transport Scotland to implement schemes and regulations and therefore additional costs are unknown and variable. We urge the Scottish Government to consider the present legislation gives enough power and duties to manage Road Works effectively without the burden of added costs which ultimately, consumers will pay for.”* (Vodafone UK)

7.46 Scottish Water explained that they were undertaking to carry out a detailed cost impact on relevant parts of the consultation that they would be happy to share on completion.

7.47 The other main areas of the consultation that were specifically cited as potentially requiring **additional resource** from both roads authorities and utility companies were:

- Mandatory use of Vault to record road authority apparatus such as drains and street lighting cables (mentioned by one respondent).
- The introduction of permit schemes (mentioned by four respondents). Costs may vary by authority and this is difficult to budget for. These carry a financial and operational burden in terms of execution and management. Permits schemes that apply to all works and all roads result in a far greater increase in utility and authority costs than those that focus on just the busiest roads. Equally, those permit schemes with onerous conditions have increased costs and reduced productivity/efficiently, much more than those schemes which have fewer and less onerous conditions.

- The introduction of lane rental schemes (mentioned by four respondents) which are also variable and difficult to resource in operational management terms. The approach in which any lane rental scheme is developed will greatly vary the costs to all works promoters. A scheme which incentivises a wholesale move towards out of hours working will have higher costs than a scheme which also incorporates variations in seasons/times of year. For out of hours working utilities are typically seeing a 25% uplift in labour costs, which they would have to pay in order to avoid the lane rental charge if a lane rental scheme is so designed.
- Works promoters have seen the number of hours available for work each day reduced dramatically e.g. to avoid a lane rental charge in London a works promoter must not work before 8p.m. in the evening and yet some Environmental Health Officers (EHOs) are preventing works after 11p.m., which leaves only 3 hours to do works. This increases the duration of works exponentially.

7.48 One utility company commented on the potential increase in FPNs, but was the only respondent to do so:

*“Openreach believes that the introduction of NRSWA Section 133 will place additional financial and administration burden on both utilities and authorities. This is an unnecessary burden when existing legislation under NRSWA Section 125 should be used by the authorities. We are also of the opinion that any increase in FPN offences will place additional financial implications for authorities and utilities alike, increasing the hearings and undermining the pragmatic approach that has been a success in Scotland for many years.”* (BT Openreach)

7.49 One utility company also pointed out that there would be hidden costs to administer and manage the new proposals and suggested that experience across England has shown that disputes and challenges are inevitable and generate additional unanticipated work for both parties.

## **Summary of ‘Other Issues’**

7.50 A large number of disparate comments were made in response to the final three consultation questions, with considerable feedback from both roads authorities and utility companies. Most of the closing comments made by respondents reflected the views already set out earlier in the consultation around the consequences of sharing costs for making good roads, and sharing responsibilities for ensuring that works are closed timeously and in good order. The need for parity between the two groups in terms of accountability was again stressed.

7.51 Several ideas for innovations were put forward and comments reflect a general commitment to learn from best practice wherever possible.

7.52 It was not possible within the scope of the current consultation for respondents to provide accurate cost implication feedback from the proposals, but there was consensus that careful planning would be required, including detailed cost analysis, before any of the proposals were implemented.

## 8. SUMMARY

### Summary

8.1 The consultation included 33 separate questions across six different policy areas, these being:

- The road network as an asset;
- Time taken to complete works;
- Compliance and enforcement;
- Review of other current and proposed legislation;
- Co-ordination of works; and
- Issues not covered elsewhere in the consultation.

8.2 It is important to note that roads authorities and related bodies had a greater presence in the response pool overall, representing nearly two thirds (60%) of all responses received. This may, therefore, have influenced some of the findings from the work. That being said, questions were well answered overall and several suggestions for changes to existing arrangements, as well as views on potential new policies/practices were put forward.

#### The road network as an asset

8.3 Responses to the consultation reflect people's recognition of the vital role of roads in Scotland for economic prosperity and quality of life for its people. In the interests of ensuring quality and longevity of roads, there was general support among roads authorities for the introduction of **contribution costs** from utility companies to the costs of making good the long term damage to roads. A scheme which could be introduced gradually and include incentives for utility companies was seen as the way forward. Utility companies, on the other hand, were strongly opposed to such a scheme, citing cost burdens on customers and questioning the evidence base for the proposition.

8.4 In the interests of minimising disruption, and again to maintain the quality of the roads as an asset, there was widespread support for changing the **period of restriction** after re-surfacing to three years and adopting this into legislation (with some exemptions). Overall, there was agreement that the voluntary three year restriction period worked well, but that adoption into legislation would remove the current inconsistency between the legislation and the Code of Practice.

8.5 Increasing the number of chargeable inspections of utility companies' works was perceived among roads authorities as potentially improving the quality of reinstatements, but there is resistance to any such change among utility companies. Similarly, divergence in views around changes in inspection fees may be difficult to reconcile, although it was agreed that poorly performing utility companies should be penalised so as not to cause reputation damage to the utilities community as a whole.

8.6 Among roads authorities, there was a perception that increased **guarantee periods** would also drive up standards and lead to better quality and more durable reinstatements. The main objection to the proposals set out in the consultation, however, was a perceived lack of evidence to

demonstrate that reinstatements that have not failed after two or three years would go on to fail in the longer term. This is perhaps another area where further research is required to ensure support from utility companies.

### **Time taken to complete works**

8.7 In the interests of ensuring the timely completion of works, a range of possible initiatives for consideration were set out in the consultation.

8.8 There was very limited support for the introduction of a **charge for occupation where work is unreasonably prolonged**, and the only support that was given (mostly from roads authorities) was caveated. Most respondents viewed that charging was not necessary since most delays were genuine and it would be difficult to judge otherwise if delays were not legitimate. The introduction of charging was also seen as potentially being administratively burdensome for both roads authorities and utility companies alike.

8.9 Similarly, the introduction of **permit schemes** was seen as unnecessary since respondents considered that the current arrangements for coordinating works using the Scottish Road Works Register, along with the existing provisions available to roads authorities, work well. The main arguments offered against the introduction of permit schemes were likely high administration costs, bureaucracy and the potential for costs to be passed on to consumers.

8.10 Support for **lane rental schemes** was, again, very limited. The majority of respondents viewed lane rental schemes as unnecessary and lacking in evidence to support them. Further research and evidence was seen as being necessary to demonstrate their relative costs/benefits. Overall, therefore, while respondents seemed committed to ensuring that works are completed within reasonable periods, the proposals set out in the consultation gained, at best, limited support.

### **Compliance and enforcement**

8.11 Both roads authorities and utility companies have clearly defined duties to fulfil in the interest of ensuring efficient and effective planning and delivery of works in roads. In reviewing the measures that are in place to ensure compliance with these duties and to enforce or penalise failures to comply, the consultation posed several questions which attracted quite disparate responses from different members of the road works community.

8.12 In particular, there was a clear split in views expressed by roads authorities and utility companies with regard to the **extension of existing summary offences dischargeable by fixed penalty notices (FPNs)**. The majority of roads authority respondents felt that the current system was not working and an extension of existing summary offences would lead to better quality reinstatements, fewer unauthorised road works and improved performance in signing, lighting and guarding. In contrast, utility companies and their affiliates considered the proposed changes were unnecessary, stating that there were already suitable measures in place to address non-compliance.

8.13 Similarly, many roads authorities expressed that they were currently unable to manage utility company non-compliance within existing legislation and so proposals to introduce **new offences dischargeable by fixed penalties** were seen as potentially leading to the required improvement in

behaviour (something not endorsed by utility companies). Comments were made that the current **FPN amounts** may be too low and should be increased so as to be an effective deterrent and there was general support (among roads authorities) for an increase in FPN amounts which, at a minimum, would be in line with inflation.

8.14 Those opposing any new offences and any increase in fines (mainly utility companies) suggested that they were not justified or needed, again stating that there was a lack of evidence to inform any such change as well as suggesting that the current penalty level was already acting as an effective deterrent to committing offences.

8.15 On the **Commissioner penalty level**, all respondents in group two opposed an increase in the maximum level of fine. This contrasted with mixed support among roads authorities. It was argued that the reputational damage to utility companies of having any penalty imposed was more likely to have an impact on compliance than increasing the level of penalty itself.

8.16 The one area of compliance where there was agreement between both roads authorities and utility companies was with regard to **definitions of 'co-operate' and 'co-ordinate'**. There was considerable opposition across the board towards revising legislation to state that penalties could be imposed for failure to comply 'such practice as appears by the Scottish Road Works Commissioner to be desirable'. Many respondents stated that the definition needed to be clearer so as not to be open to misinterpretation. Those who disagreed with all parts of the proposed revised definition stated that the existing definitions of 'co-operate' and 'co-ordinate', if used effectively, were already fit for purpose.

#### **Review of other current and proposed legislation**

8.17 Feedback on the various proposals for legislation which have previously been discussed by the Commissioner and the Policy Development Group was insightful, with many comments made in a supportive tone.

8.18 The majority of respondents agreed that the Code of Practice for **Safety at Street Works and Road Works** should become mandatory for roads authorities. The main reasons for this support were; consistency, parity of treatment and the removal of the anomaly of different prosecution levels, improved safety at road works for both operatives and road users/public, and improved quality of works and reduced disruption. Those who disagreed with this proposal reported that roads authorities are obliged to comply with Chapter 8 of the Traffic Signs Manual. It was their opinion that the Code of Practice was more suited to works of an isolated excavation nature, and thus not detailed enough to cover the full range of activities carried out by roads authorities.

8.19 The majority of respondents also agreed, in principle, that it should be made mandatory for all utility companies and roads authorities to hold digital **apparatus records** and to provide such digital records for use on the SRWR. That being said, most were aware of the significant scale of this exercise and the associated resource implications which were likely to result, particularly for roads authorities who do not currently have a complete digital record of all their existing assets. Some of those disagreeing with the proposal had concerns about security – particularly the implications of information ending up 'in the wrong hands'.

8.20 Again, the vast majority of respondents agreed with proposals that Section 61 of the Roads (Scotland) Act 1984 be repealed and Section 109(2) of NRSWA revised to provide more clarity as to where responsibility for record keeping of apparatus should lie (i.e. **Section 109 permissions**). Similarly, the majority of respondents agreed with proposals to create a new legal entity of '**major road manager**' in the interests of assisting in the co-ordination of works. The only resistance to this proposal came from those who queried the robustness of evidence indicating the need for such a role. Other views included the perception that road managers would lack relevance in rural areas as well as some concerns around data security/access to information which would ordinarily be restricted.

### **Co-ordination of works**

8.21 Co-ordination is one of the most important elements when undertaking road works, and there has been considerable previous work in this area. This section of the consultation produced some of the more lengthy and detailed responses, as well as highlighting some clear areas of divergence, again, between roads authorities and utility companies.

8.22 The majority of respondents thought that the three month **advance notice period** was necessary for good co-ordination, and provides the necessary flexibility required, and views were expressed that reducing this three month period would have negative consequences, in terms of co-ordination and in terms of the message it would send to utility companies. That being said, there was also some support for a reduction in the three month period, since it currently restricts flexibility, is excessive in rural areas and can have negative consequences in terms of increasing the number of early starts.

8.23 The majority of respondents from all groups thought that the requirement to provide advance notice for works on non-traffic sensitive roads should be maintained (i.e. **early start procedure**). Several respondents stated that they would recommend a return to one month of notice of major works on non-traffic sensitive roads. This was thought to still allow local co-ordination without being overly burdensome on utilities and roads authorities.

8.24 There was some confusion around the consultation question which asked if noon the following day should be made a statutory requirement for commencing **urgent works**, and few answered the question directly, i.e. should existing arrangements for commencing urgent works be given a statutory footing. Overall, responses were not supportive of any change to existing requirements, the main reasons being that the change would not fix the problem of misuse of the urgent works classification and that urgent works often cannot be started immediately in any case.

8.25 Just under half of respondents (24) expressed outright support for the introduction of legislation to ensure that roads authorities are required to provide the same information as utilities companies on the SRWR. The main reasons for supporting the change to **roads authority noticing obligations** were: ensuring that the fullest and most accurate information is available to the Commissioner; facilitating planning programming and co-ordination of works to the fullest; and achieving parity and equity between both roads authorities and utility companies, i.e. all abiding by the same rules. The main downside, it was perceived, was that it may be bureaucratically and



administratively burdensome for roads authorities, and that the time required to place notices for all works may outweigh the benefits of doing so.

8.26 There was considerable support for the introduction of regulations to allow roads authorities flexibility around placing notices for **minor works involving no or minimal excavation** on non-traffic sensitive roads. It was felt that this would formalise practice that is already widely used. There was also unanimous support for regulations to be introduced to require roads authorities and utility companies to enter **actual start notices** on to the Scottish Road Works Register. In conclusion, responses were mixed with regard to the current requirement for actual start notices to be lodged by noon the following day for all works in roads, including traffic sensitive roads. Respondents tended either to support the current requirements, or suggested that notices could/should be lodged sooner, where possible. The consensus was for the most up-to-date information to be available.

8.27 The majority of respondents also felt that the current requirement for **works closed notices** to be lodged by the end of the next working day was a reasonable period. Many of the reasons cited in support of the current requirement were similar to those offered for start notices (i.e. existing arrangements are perceived to work well and are realistic and achievable for all). The consensus was that works closed notices are less critical than starts, because they effectively reduce potential delays and problems rather than increasing them.

8.28 Also on co-ordination of works, the question around potentially reducing **validity periods** produced some relatively lengthy and detailed responses compared to other sections of the consultation. Most people were in favour of leaving the validity periods as they are at present, the main reason being that they afford flexibility in the case of unanticipated delays to start of works. The main reasons given in support of the reduction of the validity period to a maximum of two days were to assist in co-ordination of works with more accuracy in relation to actual start dates. Respondents generally also supported the idea that utilities and roads works authorities should be treated the same with regards to validity periods.

8.29 There was a clear split in responses to the consultation question around **duration of works**. Most of those supporting statutory powers to impose maximum durations for works on utility companies were roads authorities, although those against the proposals were split evenly between groups. Strong views were expressed by utility companies that only they possessed the requisite technical skills, knowledge and experience to be able to appropriately gauge durations required for works. Several respondents felt that New Roads and Street Works Act (NRSWA) Section 115 already adequately covered this issue. Therefore, it was proposed that greater penalties should exist for ignoring NRSWA Section 115 directions, rather than allowing roads authorities to dictate the duration of utilities' works.

8.30 The question on **embargoes** also provided a clear split in responses with none of the utility companies and related organisations who responded supporting the introduction of statutory powers to impose embargoes on works for reasons other than traffic disruption. Those who supported the introduction of statutory powers in this regard (mostly roads authorities) felt that it would formalise a voluntary system that was already working well. Most of those against the

introduction of statutory powers in this regard also felt that the present voluntary system was working well and so did not need a statutory footing. Finally, on co-ordination of works, more than half of respondents supported the **definition of 'working day'** given in the consultation document on the basis that it was clear, relevant and locally appropriate.

### **Issues not covered elsewhere in the consultation**

8.31 A large number of disparate comments were made in response to the final three consultation questions, with considerable feedback from both roads authorities and utility companies. Most of the closing comments made by respondents reflected the views already set out earlier in the consultation around the consequences of sharing costs for making good roads, and sharing responsibilities for ensuring that works are closed timeously and in good order. The need for parity between the two groups in terms of accountability was again stressed.

8.32 Several ideas for innovations were put forward and comments reflect a general commitment to learn from best practice wherever possible. It seems it was not possible within the scope of the current consultation for respondents to provide accurate cost implication feedback from the proposals, but there was consensus that careful planning would be required, including detailed cost analysis, before any of the consultation proposals were implemented.

### **Closing Comments**

8.33 The consultation produced an encouraging response from the Scottish road works community and others. Responses provided a clear steer on those proposals that would and would not receive support from the community, and have shown the main areas where there is divergence in opinion between roads authorities and utility companies. Several suggestions for changes to existing guidelines and policy were put forward to improve the planning and co-ordination of works, and there seems a general commitment between all parties to achieving the safe, effective and efficient completion of works that minimise disruption and costs to road users and consumers.

8.34 Across several areas of the consultation, it seems that utility companies in particular would like to see the presentation of more research evidence before supporting the introduction of new proposals or legislation. Indeed, the consultation has been useful in highlighting areas where respondents felt that further research may be needed, not least the need for full cost-benefit analyses for several of the proposals put forward.

8.35 What is clear from the consultation responses is that there is already a great deal of good working practice and strong relationships in the Scottish road works community and most are keen to support parity between roads authorities and utility companies, and to be transparent in their operation.

8.36 In conclusion, continued regular and ongoing communication between roads authorities, utility companies and the Commissioner to share and encourage evidence based best practice seems to be key to the future successful planning and delivery of works on Scottish roads.

## GLOSSARY OF TERMS

Table A	
Term	Explanation
Apparatus	Includes any structure for the lodging therein of apparatus or for gaining access to apparatus (Section 164).
Commissioner	The Scottish Road Works Commissioner.
Emergency Works	As defined in the following table (Table B).
Major Works	As defined in the following table (Table B).
Minor Works	As defined in the following table (Table B).
Notice	A set of specified information which should be entered in the SRWR by a specified point in time.
NRSWA	The New Roads and Street Works Act 1991.
Permanent Reinstatement	The placement and proper compaction of reinstatement layers up to and including the finished surface level.
RAUC(S)	Road Authorities and Utilities Committee (Scotland).
Road	Any way (other than a waterway) over which there is a public right of passage (by whatever means) and includes the road's verge, and any bridge (whether permanent or temporary) over which, or tunnel through which, the road passes; and any reference to a road includes a part thereof.
Roads Authority	In relation to a road or proposed road, the regional or islands council within whose area the road is (such council being in this Act referred to as a "local roads authority"); and In relation to a trunk road (whether existing or in course of construction) or, without prejudice to a special road provided (or to be provided) or to any other road constructed (or to be constructed) by the Scottish Ministers.
Road Manager	In relation to a road which is not a public road, the authority, body or person liable to the public to maintain or repair the road, or if there is none, any authority, body or person having the management or control of the road (Section 108 of NRSWA).
Road Works Authority	If the road is a public road, it is the roads authority and if it is not a public road, the road manager.
Road Works	<ul style="list-style-type: none"> <li>Works for any purposes other than roads purposes, being works of any of the following kinds executed in a road pursuance of a statutory right or with</li> </ul>

Table A	
Term	Explanation
	<p>permission granted under Section 109 (NRSWA):placing apparatus; or</p> <ul style="list-style-type: none"> <li>inspecting, maintaining, adjusting, repairing, altering or renewing apparatus, changing the position of apparatus or removing it or works required for or incidental to any such works (including in particular, breaking up or opening the road, or any sewer, drain or tunnel under it, or tunnelling or boring under the road).</li> </ul>
Road Works Permission	Permission granted by a roads authority to a person to carry out road works.
Scottish Road Works Register (SRWR)	The register of all road works and related events in Scotland.
Standard Works	As defined in the following table (Table B).
Traffic Sensitive Situation	A traffic sensitive road or that part of it which is designated traffic sensitive and in the case of a limited designation the dates or times to which the designation applies (based upon Section 123 of NRSWA).
Undertaker	The person in whom the relevant statutory right is exercisable or a person having permission under Section 109 of NRSWA (see Section 107(4) of NRSWA).
Urgent Works	As defined in the following table (Table B).
Utility Company	An undertaker by whom a statutory right to execute road works is exercised.
Works For Road Purposes	<p>(a) works for the maintenance of a road,</p> <p>(b) works for any purpose falling within the definition of "improvement" in Section 151 of the Roads (Scotland) Act 1984,</p> <p>(c) the erection, maintenance, alteration or removal of traffic signs, or</p> <p>(d) the construction of a crossing for vehicles across a footway or the strengthening or adaptation of a footway for use as a crossing for vehicles.</p>
Works In Roads	This encompasses both 'road works' and 'works for roads purposes'.

**Table B - DEFINITIONS FOR EACH WORKS CATEGORY**

Works Category	Definition
<p><b>EMERGENCY (INCLUDING REMEDIAL - DANGEROUS)</b></p>	<p>Emergency works means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property.</p> <p>Where works comprise items some of which fall within the preceding definition, the expression "emergency works" shall be taken to include such of the items as do not fall within that definition as cannot reasonably be severed from those that do.</p>
<p><b>URGENT</b></p>	<p>These are works which fall short of emergency works as defined in NRSWA, but are of sufficient urgency to warrant immediate action either to prevent further deterioration of an existing situation or to avoid an undertaker breaching a statutory obligation.</p> <p>"urgent works" means:</p> <p>(a) road works (not being emergency works) whose execution at the time they are executed is required (or which the person responsible for the works believes on reasonable grounds to be required):</p> <ul style="list-style-type: none"> <li>• to prevent or put an end to an unplanned interruption of any supply or service provided by the undertaker;</li> <li>• to avoid substantial loss to the undertaker in relation to an existing service; or</li> <li>• to reconnect supplies or services where the undertaker would be under a civil or criminal liability if the reconnection is delayed until after the expiration of the normal notice period.</li> </ul> <p>and include works that cannot reasonably be severed from such works: and</p> <p>(b) works for road purposes (not being emergency works) whose execution at the time they are executed is required (or which the person responsible for the works believes on reasonable grounds to be required) to prevent or put an end to an unplanned obstruction of any part of the road and includes works that cannot reasonably be severed from such works</p>
<p><b>MINOR WORKS</b></p>	<p>To qualify as minor works the works must:</p> <p>(a) not be emergency or urgent works, and</p> <p>(b) not be of a planned duration of more than 3 days, and</p> <p>(c) not form part of a rolling programme, and</p> <p>(d) not involve at any one time more than 30 metres of works or 20 square metres of reinstatement, or leave less than the minimum width of carriageway necessary for one-way traffic in accordance with the Code of Practice for Safety at Street Works and Road Works.</p>

**Table B - DEFINITIONS FOR EACH WORKS CATEGORY**

<b>Works Category</b>	<b>Definition</b>
<b>MINOR WORKS (WITHOUT EXCAVATION)</b>	<p>Where a works promoter proposes to execute minor works (as defined above) in a road which is not traffic sensitive, no notice is required in the case of:</p> <p>(a) minor works not involving breaking up the road. This could include works at manholes and chambers, operating valves or works of a similar nature: or</p> <p>(b) the replacement of poles, lamps, columns and signs, pole testing and similar works involving minimal breaking up of the road.</p>
<b>MINOR WORKS (MOBILE &amp; SHORT DURATION)</b>	<p>Mobile and Short Duration Works are continuous mobile operations, as well as those which involve movement with periodic stops and short duration static works. It also includes minor works (as defined above) which do not include excavation and pothole repairs of less than one square metre, involving the use of a single vehicle or a small number of vehicles.</p> <p>Mobile and short duration working shall cover all works at any specific location where the work involved takes no longer than 30 minutes in total, including setting up and clearing away all signing, lighting, guarding and spoil.</p>
<b>REMEDIAL WORKS (NON-DANGEROUS)</b>	<p>Remedial works are works in a road required to repair a defect which has developed on a road reinstatement.</p>
<b>STANDARD WORKS</b>	<p>These are road works which are not emergency works, urgent works, minor works or major works.</p>
<b>MAJOR WORKS</b>	<p>Major Works means road works by a works promoter (other than minor works):</p> <ul style="list-style-type: none"> <li>• which have been identified specifically in the Works Promoter's annual operating programme or which, if not specifically identified in that programme, are normally planned at least six months in advance of work commencing;</li> <li>• where an order is required under Section 14 of the Road Traffic Regulation Act 1984 for any works other than emergency works;</li> <li>• other than emergency works and urgent works, in a multi-lane road (more than one lane in each direction) that is traffic sensitive where one or more lanes are closed to enable the works to take place; or</li> <li>• other than emergency works, which have a duration in excess of 10 days and for which traffic control is required for three or more of those days, in accordance with the Code of Practice for Safety at Street Works and Road Works.</li> </ul>
<b>SUBSTANTIAL WORKS FOR ROAD PURPOSES</b>	<p>Substantial works means works for road purposes which comprise a reconstruction, widening, alteration in the level, resurfacing or specialist non-skid surface dressing of the part of the road concerned and:-</p> <p>(a) if executed in a footpath, footway, bridleway or cycle track, extend for</p>

**Table B - DEFINITIONS FOR EACH WORKS CATEGORY**

<b>Works Category</b>	<b>Definition</b>
	<p>more than 30 metres of continuous length and result in the width of the footpath, footway, bridleway or cycle track available for pedestrians, cyclists, or others having right to use the way as the case may be, being reduced by more than two thirds; or</p> <p>(b )if carried out in the carriageway, extend for more than 30 metres of continuous length and result in the use by vehicles of the carriageway being prohibited or the width of the carriageway available for vehicular traffic being reduced by more than one third.</p>

## APPENDICES



## Appendix 1: LIST OF RESPONDING ORGANISATIONS

Aberdeenshire Council	Morrison Utility Services
Angus Council	Network Rail
Argyll and Bute Council	NJUG
BEAR Scotland	North Ayrshire Council
BT Openreach	North Lanarkshire Council
City of Edinburgh Council	Orkney Islands Council
Clackmannanshire Council	Perth and Kinross Council
Clancy Docwra	Renfrewshire Council
COSLA	Scottish Borders Council
CPT	Scottish Power Energy Networks
Cycling Scotland	Scottish Water
Dumfries and Galloway Council	SGN
Dundee City Council	Shetland Islands Council
East Dunbartonshire Council	South Ayrshire Council
East Renfrewshire Council	South Lanarkshire Council
Energy Networks Association	South West Water
Falkirk Council	Stirling Council
Fife Council	Strathclyde Partnership for Transport
Glasgow City Council	Traffic Commissioner for Scotland
Highland Council	Transform Scotland
Inverclyde Council	Transport for London
JAG UK	Virgin Media
Living Streets Scotland	Vodafone UK
Midlothian Council	West Lothian Council

*Note: One response was received from a private individual and one utility company respondent requested that their response remain anonymous.*

## Appendix 2: THE CONSULTATION QUESTIONNAIRE

**Question 1: What contribution do you consider should be introduced?  
What are your reasons for coming to this view?**

**Question 2: Do you think the period of restriction following resurfacing  
should be changed? Please can you explain your answer?**

**Question 3: What is an appropriate level of inspection for utility  
company road works where a fee can be charged by the roads authority?  
Please can you explain your answer?**

**Question 4: Should the arrangements for inspection fees be changed, and  
could this include a performance element?**

**Question 5: Do you agree that such increased periods be introduced?  
What are your reasons for coming to this view?**

**Question 6: Scottish Ministers would welcome views on the introduction  
of a charge for occupation where work is unreasonably prolonged.**

**Question 7: Scottish Ministers would welcome views on the introduction  
of permit schemes.**

**Question 8: Scottish Ministers would welcome views on the introduction  
of lane rental schemes.**

**Question 9: Should there be an extension of existing summary offences  
dischargeable by fixed penalty notice? (Please can you explain your  
answer?)**

**Question 10: Should we create the proposed new summary offences with a view to introducing fixed penalty notices? Please state the reasons for your view.**

**Question 11: Do you agree that the current fixed penalty notice amounts should be increased in line with inflation e.g. consumer price index?**

**Question 12: What maximum level of penalty do you consider is required to ensure that it can influence the behaviour of utility companies and roads authorities which do not comply with their duties? Should this be increased in line with inflation e.g. consumer price index?**

**Question 13: Do you agree that the definitions of co-operate and co-ordinate in Sections 118 and 119 be revised as proposed? Please provide the reasons for your view.**

**Question 14: Do you agree that the Code of Practice for Safety at Street Works and Road Works should become mandatory for roads authorities? Please provide the reasons for your view.**

**Question 15: Do you agree that it should be made mandatory for all utility companies and roads authorities to hold digital records of their apparatus in roads and to provide such digital records for use on the SRWR? Please provide the reasons for your view.**

**Question 16: Do you agree that Section 61 of the Roads (Scotland) Act 1984 be repealed and Section 109(2) of NRSWA revised to provide more clarity as to where responsibility for record keeping of apparatus should lie? Please provide the reasons for your view.**

**Question 17: Do you agree that the designation of “major road managers” be created? Please provide the reasons for your view.**

**Question 18: What are your views on the 3 month advance notice period for major works?**

**Question 19: Do you consider that the requirement to provide advance notice for works on non traffic sensitive roads should be removed? If you do, what benefits do you consider this would bring?**

**Question 20: Should the early start procedure be a statutory requirement?**

**Question 21: What are your views on making noon the following day a statutory requirement for commencing urgent works?**

**Question 22: Should legislation be introduced to ensure that roads authorities are required to provide the same information as utility companies and to the same timescales?**

**Question 23: Should regulations be introduced to allow roads authorities the flexibility around placing notices for works involving no or minimal excavation on non-traffic sensitive roads?**

**Question 24: Should regulations be introduced to require roads authorities and utility companies to enter actual start notices on to the Scottish Road Works Register?**

**Question 25: Is the current requirement for actual start notices to be lodged by noon the following day for all works in roads, including traffic sensitive routes, acceptable? Please can you explain your answer.**

**Question 26: Is the current requirement for works closed notices to be lodged by the end of the next working day a reasonable period? What alternative period would you propose for traffic sensitive roads and what are the advantages or disadvantages?**

**Question 27: Should we reduce the validity period to a maximum of 2 days and should it apply to both utility companies and roads authorities alike? If you consider that a different validity period would be appropriate, please state the period and provide the reasons for your view.**

**Question 28: Should roads authorities be provided with statutory powers to impose maximum durations for works on utility companies?**

**Question 29: Should roads authorities be given statutory powers to impose embargoes on works for reasons other than traffic disruption?**

**Question 30: Do you agree with the definition of a working day given above?**

**Question 31: Please identify any further issues which should be addressed that you think could contribute towards improving the way in which works in roads are managed and undertaken.**

**Question 32: Please identify any potential innovations which you think could contribute towards improving the way in which works in roads are managed and undertaken.**

**Question 33: Please outline the potential impact of any additional costs.**

Further copies of this document are available, on request, in audio and large print formats and in community languages (Urdu; Bengali; Gaelic; Hindi; Punjabi; Cantonese; Arabic; Polish).

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**Gheibhear lethbhreacan a bharrachd ann an cruth ris an èistear, ann an clò mòr agus ann an cànan coimhearsnachd. Cuir fios gu:**

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