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Streetworks – proposed positions

Summary

Following the discussion at the last Board meeting, this paper proposes, and seeks approval for, a number of recommended positions on issues relating to streetworks.

Councils need stronger powers to ensure that streetworks are properly coordinated and completed as quickly as possible, that reinstatement is conducted properly, that the cost of long-term damage caused by streetworks can be recouped and that charges are applied appropriately.

Recommendations

Members are asked to discuss the following with a view to agreeing LGA lobbying positions:

- Permit schemes should not be subject to Government approval and should be simpler to implement and operate;
- Councils should be able to require a bond or deposit from utilities to simplify the procedure for recouping costs if remediation works are not completed properly;
- Regulators should take a more sensible approach that allows utility companies to invest in infrastructure to reduce need for future planned and emergency streetworks.

Action

It is proposed that the Chair of the Board write to Ministers to communicate the agreed positions and that LGA officers follow up with DfT officials.

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Background

1. Following discussion on investment in roads at the last meeting, members requested a further discussion of the powers councils need to recoup the cost of damage to highways and manage the disruption caused by utility streetworks.

The issues

Coordinating works to reduce disruption

2. Authorities have responsibilities for monitoring works and reinstatements and a duty to coordinate work (the utilities have a duty to cooperate). In the absence of Permit Schemes they have some powers to manage the timing of streetworks e.g. to avoid work just after resurfacing or to embargo works on a road for a 12 month period.
3. Councils have been able to apply to the Secretary of State to operate permit schemes since 2008. The schemes are intended to enable authorities to be more proactive in the management and control of activities taking place; to impose constraints on the way work is carried out; and to direct the timing of activities. Two permit schemes are currently in operation in London and Kent.
4. It is too early to say whether permit schemes in their current form are effective. Greater take up of such schemes will depend on whether the schemes in operation prove to be effective, a reduction in the burdens involved in putting a scheme in place and the ability to include measures designed to reduce avoidable 'idle' time. In line with LGA policy, there should be no need for councils to seek Government approval to introduce a scheme.

Ensuring works are completed quickly

5. 'Maximum overrun charges' (fines) are the main tool available to local authorities to ensure that works are completed quickly. However the maximum fine is set at £2,500 or £5,000 and local authorities have been reluctant to spend time and money pursuing offenders through the courts because of the low levels of fines. The Government is considering responses to a consultation on increasing these fines to a much higher level.
6. 'Lane rental' charges were legislated for in the 2000 Transport Act. Trials followed, but the evaluation concluded that there was little incentive to avoid the

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charges as the utility regulators agreed they could be passed on to the customer. There is renewed interest in using lane rental charges. The Mayor of London has argued that lane rental charges could be used to supplement permit schemes to discourage 'idle' time which a utility could have avoided. However, London's initial discussions with Ministers suggest that Government is unlikely to support the introduction of lane rental schemes and that there is significant scope for using permit schemes in a more sophisticated way that would be more effective. In a political climate where lane rental may be seen as supplementary taxation, the latter option looks like a more realistic way of making progress.

Ensuring road remediation is carried out properly

7. The New Roads and Street Works Act (NRSWA) makes utility companies responsible for reinstatement of their trenches and a national specification sets out the methods and materials that should be employed in doing so. Councils have powers to carry out investigations and check the work. If dissatisfied, councils can serve notice to carry out remedial work and if the utility fails to comply, the authority can carry out the work itself and recover the costs. In practice, these powers are difficult to enforce. One option would be to allow councils to take a 'bond' or deposit from utility companies so that, if remediation works are not completed properly, they do not have to go through complex procedures to recoup the costs of making good. This is legally possible but only under provisions of the Act that have never been brought into effect by a commencement order.

Who should pay for unavoidable long-term damage to roads caused by works?

8. A recent TRL report states the service life of carriageways is reduced by 17% and footways by 10% as a result of utility trenches. The additional maintenance costs are estimated at £70.1million or 7.7% of English highway authorities' capital expenditure.¹
9. The New Roads and Street Works Act 1991 allows for the Secretary of State to make provisions for requiring the utilities to contribute to the costs of making good long term damage. The TRL report proposes that charges could be levied to cover the costs of long term damage. These could vary dependant on the road hierarchy and condition.²

¹ Transport and Research Laboratory (TRL) report *A Charge Structure for Trenching in the Highway* commissioned by TfL and CSS (now ADEPT)

² It proposes carriageway charges could vary from £45.48/m² for a major carriageway in excellent condition to £3.59/m² for a minor carriageway in poor condition; and footway charges from £23.89/m² for a high amenity footway in excellent condition to £1.49/m² for a standard footway in poor condition.

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10. Another option is to enable the section of the Traffic Management Act 2004 which made provision for councils to require full or half width resurfacing. This may not be all councils' preferred option³ but may be a useful power nonetheless.

Other issues

11. BT is subject to different legislation which exempts them from legislation limiting what can be done in digging up roads – this anomaly needs to be resolved.
12. Communications with road users could be much improved through requiring better signage explaining why works are being undertaken.
13. Regulators need to be more positive about the need for investment. For example, OFWAT did not allow for investment in London water mains to the extent that water companies wanted – leading to more emergency streetworks; or to allow for future customer connections without the need for road works e.g. as cable companies.
14. There are problems with the mapping of underground infrastructure which create unnecessary additional digging and works, where utilities cannot locate specifically enough what they are trying to repair.
15. There is a need to share good practice. For example, some councils photograph the infrastructure below ground before it is covered up again so that in future contractors, utilities and the council know exactly what is underground. More could be done to build on good practice on working closely with utilities to reduce disruption. New technologies have been successfully used to reduce the time needed to make repairs.

Actions

15. Members are asked to agree positions and actions set out on the summary page of this paper.

Financial Implications

16. None

³ These options are discussed in Cllr Andrew Carter's briefing note Nov 2010 attached at annex A.