



## **Review of SGN assessment of the impact of NRSWA 1991 and Transport (Scotland) Act 2005 on their business**

Les Guest Associates has been asked to provide an opinion on the submission by Scotland Gas Networks for an increase in revenue as a result of the implementation of the Transport (Scotland) Act 2005 [T(S)A].

The opinion is based on experience of working in the gas industry, representation of all utilities as Chief Executive of the National Joint Utilities Group (NJUG Ltd) and part of the executive group of HAUC(UK) (Highway And Utilities Committee). In the latter two roles, Les Guest has worked with the Scottish Road Works Commissioners, John Gooday and his successor, Elspeth King, and met with Keith Brown MSP, Minister for Housing and Transport and other Scottish MPs. As such, he understands the drivers for change in Scotland.

The Scottish Road Works Commissioner became responsible for road works in 2007 and has continually stressed to the Scottish Community, and utilities in particular, that co-ordination, unnecessarily long periods of occupation, the quality of road works layout and subsequent reinstatement and the impact works have on the public, were particularly poor and had to improve. Whilst significant improvement has been made amongst utilities, some have yet to reach the desired standards. The Commissioner has taken steps and fined utilities for poor performance, but to date, this has not included Scotland Gas Networks who have been diligent in meeting the required levels. Despite the fines, there has still been some lethargy by some utilities which has prompted the Minister to initiate a strategic consultation in 2013 which is likely to become even more onerous for utilities to operate and more costly to comply.

The submission, dated June 2013 outlines in detail the additional costs Scotland Gas Networks claim have been incurred from 2008 to date, to meet the increasing demands of government, road authorities and the public as a result of the introduction of the T(S)A.

I have reviewed the documents submitted, and the responses to the supplementary questions asked by Ofgem. In addition, and using past correspondence with the Road Works Commissioner, I have made the following comments on the costs incurred. It is important to note that some increased costs are directly due to the implementation of the T(S)A, but many are due to the appointed Commissioner using its powers under T(S)A to change the way authorities have managed their works and in particular, their duty to co-ordinate. In many cases, to demonstrate their control, authorities have demanded increased correspondence and documentation before works can commence together with increased site visits and meetings. This has resulted in a significant increase in operational costs compared with the period pre T(S)A. In my opinion, allowance should be made for directly attributable costs together with the required changes in working practice demanded by the Commissioner and Road Authorities. In the table below, I have indicated where I understand these costs to be justified.



**Table 1 - Opinion on costs**

<b><i>Ref</i></b>	<b><i>Topic</i></b>	<b><i>Summary from SGN</i></b>	<b><i>Consultant Opinion</i></b>
8.1	Fixed Penalty Notices	Powers to give FPNS were introduced in 2009 and Roads Authorities were encouraged to look to this as a first means of punishment. As in England, the take up rate by authorities has varied with some being more aggressive than others. South Lanarkshire introduced a best practice guide which has encouraged more authorities to use the powers. The distinction between a prosecution and a FPN is that the revenue from the FPN is retained by the Authority, whilst prosecution charges remain with the courts.	This is an additional cost directly introduced by T(S)A. Over the period, it appears that 1441 FPNs have been paid and during the same period some 180,000 notices were registered. The non-compliance rate is therefore around 99%. To attain 100% and avoid all FPNs, would incur significant costs, likely as much or more than the value of the fines. Experience in England shows that year on year, more authorities will use the FPN tool and use it more frequently. In my opinion, allowance of 1% is justified, but this should be based on the lower FPN charge of £80.
8.2	Scottish Road Works Register	The register is used by all authorities and utilities in Scotland. The register has been in existence in various forms since the mid 80's, however, in the past few years, more expenditure has been required to develop the system to enable it to comply with changes in the T(S)A. The cost of keeping the register has been circa £1m per annum for a number of years and the annual cost is divided proportionally between members. This is a compulsory charge and cannot be avoided. Utilities contribute 70% of the running costs of the register	Whilst there has been an increase to comply with the T(S)A, this has reduced in 2013. However even if the changes were not introduced as part of T(S)A, SGN would still be required to pay an annual fee. It is not clear whether these are additional costs or the total costs to fund the register. The costs appear to be fairly consistent with one minor increase in 2011/12. Therefore if these are total annual costs, then they are in line with pre - T(S)A arrangements
8.3	Administration Costs	There has been additional administrative duties required to meet the T(S)A in noticing, co-ordination meetings,	There is no doubt that the Commissioner has put more focus on utilities to improve in each of these areas and the previous Commissioner put equivalent pressure on Road Authorities to



		communications, scheduling, planning and validation of FPNs.	demand more information, more frequently. I believe that an allowance should be made, however, given that the response to supplementary questions is still not clear, I would need more robust evidence to substantiate the full number of additional FTEs due to T(S)A
8.4	Training Expenditure	To ensure all the workforce understands the impact of the T(S)A and how they need to change, it is inevitable that additional training costs would be incurred.	The introduction of the T(S)A and increased focus by the Commissioner is very important, and as such, it is right that it is cascaded to all staff, industrials and contractors. Supplementary questions have indicated that training of contractors will have likely have been undertaken during team talks and down time periods and if this is the case, then it should not be double counted. It is therefore not clear what additional training has actually taken place and at what cost, other than for management and staff.
8.5	IT Operations Expenditure	IT costs to communicate effectively with Road Authorities including Clearman, Maximo and ETON5. Costs shared with Southern Gas Networks	It is not clear how much expenditure is due to changes required to interface with the SRWR and how much was driven by changes required for the T(S)A I am also not sure how relevant ETON5 is to Scotland. There will be some changes necessary for noticing / amendments / extension requests. However, SGN have not been able to substantiate these costs despite supplementary questions. Whilst I have the opinion that there should be an allowance, probably around 50% of the claim, I understand this needs to be demonstrated clearly to Ofgem with robust evidence
8.6	Management Expenditure	There has been the need for increasing additional duties, involvement and meetings by management to ensure compliance with T(S)A. More importantly, the commitment from the Network to work with the Commissioner to improve co-ordination, higher standards and greater compliance was necessary.	I agree that an allowance should be made. The Commissioner has worked with utilities to raise standards and Andrew Leyden has carried out an important dual role; To represent Scottish utilities at a senior level and also to drive improvements with his team within the Network. Had this not happened, not only would the network have received greater penalties and fines, but it is likely that many other T(S)A changes would have been brought in much earlier. Some of these have recently been included for consideration in



			<p>the latest (April 2013) consultation. However, SGN have found it difficult to substantiate all of their claims and therefore I consider that broadly, 60% is a reasonable allowance based on the evidence provided.</p>
8.7.1	Working Hours - extended -s115 notices	<p>One of the drivers for the T(S)A is to minimise the disruption to the public by works. The Commissioner has put more pressure on Road Authorities to co-ordinate more effectively and encouraged them to use their powers more forcefully and insist on utilities and their own contractors to work beyond the normal working day, to minimise impact and more importantly, reduce the duration of the works. Before T(S)A, this would only have been occasional high profile projects, however, this has extended to be applied to many sensitive roads.</p>	<p>This is fundamental to the principles of T(S)A and should utilities not co-operate, Authorities can make it very difficult by issuing many cumbersome directions. It is also necessary to pay a premium rate for working outside hours, not only for labour, but also for additional safety equipment such as lighting rigs. Also, plants may be required to be opened on Sundays or in the evening to ensure materials are available when required. This would also be at a premium cost. SGN have not justified this in their response, had they done so, I would have recommended full allowance.</p>
8.7.2	Working Hours - Restricted due to Roads Authorities	<p>One of the drivers for the T(S)A is to minimise the disruption to the public by works. The Commissioner has put more pressure on Road Authorities to co-ordinate more effectively and encouraged them to use their powers more forcefully and insist that utilities and their own contractors work outside rush hour times on many roads. Before T(S)A, this would only have been a few high profile projects, however, this has extended to be applied to many sensitive roads.</p>	<p>This is fundamental to the principles of T(S)A. During rush hours, traffic management may need to be operated manually to ensure optimum flow of traffic and work affecting traffic during these periods will be restricted. I would also agree that productivity can be reduced substantially by restricted site lengths, especially where insertion techniques cannot be maximised, however, SGN need to demonstrate this more effectively. In my opinion, had SGN provided robust evidence, I would have recommended the majority of these costs</p>
8.7.3	Hire of Vac-Ex machinery	<p>Vac-ex is used to reduce excavation size, to speed up the process and to</p>	<p>Vac-ex is a well established technique and brings many benefits. Even without the pressures of the T(S)A, I would</p>



		operate more safely and reduce damage.	expect the network to adopt this where it can be used appropriately and cost effectively. I would suggest the benefits this good practice delivers outweighs the claim.
8.7.4	Traffic Management schemes	<p>The T(S)A has enabled the Commissioners to put more pressure on Road Authorities to co-ordinate works more effectively and reduce the impact of works on the public. An essential element of this is the requirement to provide plans, not only showing the proposed works, but including full traffic management designs. Before T(S)A, a site meeting would have been sufficient and verbal agreements made as to where signs, lights etc. would be located. On rare occasions, a special plan would be drawn up.</p> <p>This is now much more formal and has become a requirement for the majority of major works on busy routes, but also some of the less busy roads. Whilst it is clear that authorities are not always applying discretion when to demand these plans, it is within their powers to demand such detailed plans where they believe that they require it to co-ordinate.</p>	<p>There will have been a small element of Traffic Management before the T(S)A was introduced, but this has become much more widespread as a result of T(S)A and pressure exerted by the Commissioner and Road Authorities. Experience across utilities in England have shown that this is an ever increasing cost of project management. The cost of external TM designs was on average around £400 for a small scheme / single street. From my experience, I would suggest 90% - 95% of the claim would have been appropriate, however I do acknowledge that SGN have not managed to substantiate this effectively, even by supplementary questions.</p>
8.7.5	Special Signage Requests	<p>Advanced warning signs are sometimes requested by the authority to advise drivers of potential delays. This is good practice for heavily trafficked routes. Once the public are made aware that hazards are ahead, they can make a choice to take alternative routes to avoid</p>	<p>This is good practice to keep the public informed, and reduces the number of complaints by the public and media. Therefore it should be regarded as business as usual</p>



8.7.6	Temporary Traffic Orders	Temporary Traffic Regulation Orders (TTROs) are required by the authority for road or footway closures or when other controls are introduced. Whilst the provision has been in place before the T(S)A, authorities have been encouraged to demand these more of these orders by the Commissioner, the use and cost varies between authorities.	TTROs were introduced in the 1980's and could, and have, been required before the T(S)A. It is acknowledged that the number has increased in the past 5 years due to pressures put on authorities by the Commissioner. In my opinion, I believe that between 50% and 100% of these costs should be allowed
8.7.7	Traffic Modelling	On some high profile inner city projects, traffic modelling is required to be carried out by a specialist. This is in addition to Traffic Management plans (8.7.4).	This should be linked with 8.7.4 From my experience, I would suggest 90% - 95% of the claim would have been appropriate, however I do acknowledge that SGN have not managed to substantiate this effectively, even by supplementary questions.
8.7.8	Parking Bay Suspensions	Costs need to be paid to Road Authorities for the administration of suspending parking bays. These charges were in existence before T(S)A	The costs for suspending parking bays were allowed under the Road Traffic Regulation Act 1984 and therefore unchanged by the T(S)A.
8.7.9	Restrictions of work following road resurfacing	Whilst s117 of NRSWA has been in existence for many years, the T(S)A has increased the validity period up to 3 years following some types of works on the carriageway. If sufficient warning is given by the authority, a utility can elect to bring works forward to take place before the resurfacing is carried out, or they may delay the project until 3 years after the resurfacing date. Emergency work and Customer requested work are exempt from these regulations. If the utility can show that the condition of the main has deteriorated since resurfacing, due to for	Whilst the period has increased, there is no significant change resulting in costs if the utility checked the condition of its assets before the proposed resurfacing and / or their long term plans for replacement. If they have not been given that opportunity, then the validity of the resurfacing period should be challenged



		example, an increase in broken mains, then dispensation can be agreed with the authority	
8.7.10 to 8.7.11	Contractor other cost and variations due to street works		It is not clear how the additional costs are extra to those quoted in 8.1 to 8.7.9. I found the original claim to be confusing and answers to supplementary questions have not made it any clearer. I do think there will be extra costs incurred, but these have not been substantiated sufficiently and I am unclear as to whether these have been double counted or not

### **Future Changes**

In April 2013, Transport Scotland issued the **"Strategic Consultation on Works on Scottish Roads"**. This consultation is looking to develop further the changes made since the introduction of the Transport (Scotland) Act. Views have been sought on some 30 questions and the results of the deliberations are likely to be published in Autumn.

The key points to be noted are:

**Long Term Damage** - URS Scott Wilson have carried out a desk top review of the TRL report on long term damage and recommended its implementation. If this is introduced, it could have a serious impact on operating costs. The TRL report recommends a contribution to the authority of up to £40 for every square metre of reinstatement carried out. This could increase costs by between £1m and £4m per year depending on application and rates.

**Inspections** - The consultation asks for views on increasing the percentage of paid inspections carried out by authorities from the current rate of 30% to a maximum of 100%

**Overstay charges** - In England, overstay charges (s74) have been in operation since 2001. NRSWA s133 allows Scotland to introduce a similar charging scheme. Experience in England shows that whilst the introduction will reduce durations, there becomes a different incentive for authorities as they can keep and use all revenue generated. In England, even after 10 years of operation, many utilities are exceeding the agreed durations for between 2% and 5% of their activities.

**Permits** - The previous Commissioner deferred the introduction of permit schemes until they are proven to be successful in England. Whilst it is not clear what the new Commissioner's views on this are, the provision has been included in the consultation. Permits not only change working practices by the introduction of onerous conditions and the different interpretations of schemes, but additional costs will be incurred to manage works differently where schemes apply and permit fees will be incurred.





**Lane Rental** - Scotland are keeping an eye on the two lane rental schemes in England and have asked for views from consultees. If it mirrors the English scheme daily charges of up to £2,500 can be levied, or the networks will need to work outside the usual working hours which increases rates and costs further.

**Fixed Penalty Notices** - There is a call to increase the number of offences where FPNs may be given instead of prosecution. This is the preferred method in England as all income is retained by the authority. With the additional offences included, it is estimated that around 3% of works may attract FPNs

**Increase in Commissioner Penalty limits** - Currently, the maximum penalty that can be given by the Commissioner is £50,000. The consultation refers to maximum penalties which can be issued by other regulatory bodies including Ofgem (max of 10% of turnover). Whilst this would be disproportionate for road works performance, it is suggested that the level increases to a maximum of £200,000

### **Conclusion**

There is no doubt that the introduction of the Transport (Scotland) Act has increased the operational cost of working in Scotland. A proportion of this cost is as a direct result of the regulatory changes made during this period. However, there has also been a strong drive to improve utility works in Scotland, led by the Road Works Commissioner and endorsed by the Minister. A great deal of pressure has been exerted on Authorities to be more assertive / aggressive and demand changes in practice. This in turn has increased costs much of which has been documented by Scotland Network.

In my opinion, they will have been a substantial increase in operation due to T(S)A and the Commissioner, however the original submission and supplementary questions have failed to provide robust evidence to substantiate the claims.

There are a number of claims which I believe to be good practice / business as usual, as they do deliver other benefits, there are some which I believe a proportion should be allowed and some that are fully justified. Sections 8.7.10 and 8.7.11 are still very confusing, despite a request by Ofgem for further information. At first sight, they appear to be a duplication of additional costs in earlier sections.

Les Guest

for

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