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SCOTTISH STATUTORY INSTRUMENTS

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**2007 No. 411**

**ROADS AND BRIDGES**

**The Scottish Road Works Commissioner  
(Imposition of Penalties) Regulations 2007**

*Made* - - - - 3rd September 2007  
*Laid before the Scottish  
Parliament* - - - - 5th September 2007  
*Coming into force* - - 1st October 2007

The Scottish Ministers make the following Regulations in exercise of the powers conferred by section 119A of the New Roads and Street Works Act 1991<sup>(1)</sup> and all other powers enabling them to do so.

In accordance with section 163A of that Act<sup>(2)</sup> they have consulted with such persons and road works authorities as they think appropriate.

**Citation and commencement**

1. These Regulations may be cited as the Scottish Road Works Commissioner (Imposition of Penalties) Regulations 2007 and come into force on 1st October 2007.

**Interpretation**

2. In these Regulations “the 1991 Act” means the New Roads and Street Works Act 1991.

**Imposition of penalties**

3. Where the Commissioner<sup>(3)</sup> is satisfied that—  
(a) a road works authority has failed to comply with duties imposed on them by section 118 of the 1991 Act (general duty of road works authority to co-ordinate works)<sup>(4)</sup>; or

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(1) 1991 c. 22. Section 119A was inserted into the 1991 Act by section 25 of the [Transport \(Scotland\) Act 2005 \(asp 12\)](#) (“the 2005 Act”).  
(2) Section 163A was inserted by section 39 of the 2005 Act.  
(3) See reference to the Scottish Road Works Commissioner in section 112A(1) of the 1991 Act. Section 112A was inserted by section 19 of the 2005 Act.  
(4) Section 118 was amended by section 23 of the 2005 Act.

- (b) an undertaker has failed to comply with duties imposed on them by section 119 of the 1991 Act (general duty of undertakers to co-operate)(5),

the Commissioner may impose a penalty on the road works authority or the undertaker, as the case may be.

### **Level of penalties**

4.—(1) Subject to paragraph (2), a penalty imposed under regulation 3 shall be of such amount as the Commissioner thinks appropriate in all the circumstances of the case.

- (2) The amount of a penalty mentioned in paragraph (1) above shall not exceed £50,000.

### **Payment of penalties**

5.—(1) Subject to paragraph (2), any penalty imposed under regulation 3 shall be payable to the Scottish Ministers, within 36 days of its imposition.

(2) Where a road works authority or, as the case may be, an undertaker, appeals under regulation 8, against the imposition of a penalty, the 36 day period for payment shall be suspended from the day on which the appeal is lodged until the day on which the appeal is determined.

### **Notification of penalties**

6.—(1) Where a penalty has been imposed under regulation 3, the Commissioner shall give notice in writing to the chief executive officer of that road works authority or undertaker, as the case may be.

- (2) Written notice given under paragraph (1) shall include the following information—
- (a) a note of the facts the Commissioner has considered in imposing the penalty;
  - (b) the amount of the penalty;
  - (c) where the penalty may be paid;
  - (d) the methods by which the penalty may be paid; and
  - (e) the date, being 36 days from the imposition of the penalty, by which it must be paid.

### **Enforcement of penalties**

7. Where a penalty imposed under regulation 3 remains unpaid after 36 days from its imposition it shall be enforceable in like manner as an extract registered decree arbitral bearing a warrant for execution issued by the sheriff for any sheriffdom.

### **Appeals**

8.—(1) A road works authority or an undertaker on whom a penalty has been imposed under regulation 3 may appeal to the sheriff against the imposition of the penalty by the Commissioner.

- (2) An appeal to the sheriff under this regulation shall be by way of summary application.

(3) The period within which an appeal under this regulation may be brought shall be 28 days from the date on which written notice in terms of regulation 6 was served on the road works authority or undertaker as the case may be.

- (4) The sheriff may—
- (a) dismiss the appeal;
  - (b) allow the appeal and quash the imposition of a penalty;

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(5) Section 119 was amended by section 24 of the 2005 Act.

- (c) substitute for the level of penalty imposed by the Commissioner a different level of penalty not exceeding £50,000; or
  - (d) remit the case to the Commissioner to dispose of the case in accordance with the directions of the court.
- (5) Any party to an appeal to the sheriff under this regulation may appeal on a point of law from the decision of the sheriff to the sheriff principal within 21 days from the date of that decision.

St Andrew's House,  
Edinburgh  
3rd September 2007

*STEWART STEVENSON*  
Authorised to sign by the Scottish Ministers

## **EXPLANATORY NOTE**

*(This note is not part of the Regulations)*

Section 119A of the New Roads and Street Works Act 1991 (inserted by section 25 of the Transport (Scotland) Act 2005) allows the Scottish Ministers, by regulations, to make provision for or in connection with the imposition by the Scottish Road Works Commissioner of penalties on road works authorities and undertakers who fail to comply with the duties imposed on them by sections 118 and 119 of the 1991 Act respectively. Section 118 relates to the general duty of road works authority to co-ordinate works and section 119 relates to the general duty of undertakers to co-operate. These Regulations exercise that power.

Regulation 3 makes provision as to the imposition of penalties by the Commissioner.

Regulation 4 provides as to the level of these penalties (which can be an amount up to a maximum of £50,000).

Regulation 5 provides for a period of 36 days within which a penalty must be paid.

Regulation 6 provides for written notification to be given to a road works authority or undertaker on whom a penalty has been imposed and details the information to be contained in such a notification.

Regulation 7 makes provision for the enforcement of unpaid penalties.

Regulation 8 provides that a road works authority or an undertaker upon whom a penalty has been imposed may appeal to the sheriff by way of summary application against the imposition of the penalty imposed by the Commissioner.