

EXECUTIVE NOTE

The Scottish Road Works Register (Prescribed Fees and Amounts) Regulations 2008 (SSI/2008/16)

1. The above instrument was made in exercise of the powers conferred on the Scottish Ministers by sections 112A(4) and 163(1) of the New Roads and Street Works Act 1991("NRSWA"). This instrument is subject to the negative resolution procedure.

Policy Objectives

2. The Transport (Scotland) Act 2005, amongst other matters, aims to improve the co-ordination, planning and quality of road works carried out in Scotland. Part 2 of the Act, which includes amendments to NRSWA provides a statutory framework for improvements to road works. The amendments made to NRSWA include the insertion of section 112A which provides for the Scottish Road Works Commissioner ("the Commissioner") to keep a register to be known as the Scottish Road Works Register ("SRWR"). Section 112A(4) enables the Scottish Ministers by regulations to provide that the payment to the Commissioner of a prescribed fee is a condition of access to the SRWR and to make other provisions as to the payment to the Commissioner by such persons as are prescribed of such amounts as are prescribed. Section 112A(5) provides that the amounts received by the Commissioner pursuant to subsection (4) are to be applied by the Commissioner to the keeping of the SRWR.

3. This instrument accordingly exercises that power to prescribe the fees, persons and amounts. The provision made replicates arrangements made for the collection of fees for the keeping of the existing register, also presently known as the Scottish Road Works Register, by Susiephone Ltd on behalf of roads authorities (local authorities and Scottish Ministers). That register will be replaced by the SRWR to be kept by the Commissioner. Susiephone Ltd are the company engaged in the operation of the existing register and the SRWR.

4. Regulation 3 prescribes roads authorities and undertakers as the persons who will pay the prescribed amounts. It also sets out the prescribed amounts they will pay. Each roads authority pays an amount for each financial year which is set out in Schedule 1. The amount for each roads authority differs to reflect the population in each roads authority area. The prescribed amount payable by undertakers for each financial year is based on how many local authority areas an undertaker has apparatus in roads before the financial year to which the amount relates. The prescribed fee for the financial year commencing on 1st April 2008 is calculable in accordance with the formula contained in the instrument at regulation 4. The methodology for the calculation of the fee is a 75/25 split between undertakers and roads authorities respectively of the balance of the costs of keeping the SRWR for that financial year after deduction of the prescribed amounts payable under regulation 3. Each road authority's and undertaker's share of that balance will reflect their use of the existing register over the last 3 years.

5. The prescribed amounts payable in regulation 3 apply to each financial year beginning with that commencing on 1st April 2008. The prescribed fee in regulation 4 relates to one financial year (that commencing on 1st April 2008) and the proposal for future such years will

be to again exercise the power to prescribe the fee for each year to take into account the changing costs of keeping the register year on year, and to review it's working.

Consultation

6. The Scottish Government launched the consultation 'The Regulation of Utility Company Road Works' in October 2003. The consultation aimed to establish the extent and type of problems, proposals for change and how co-ordination and quality of road works should be measured and improved.

7. The Scottish Government set-up a steering group to assist the development of secondary legislation required to implement the provisions of the Act. The steering group consisted of members of the Scottish Government, Co-Chairs of Roads Authorities and Utilities Committee (Scotland) (RAUC(S)), the Chair of the Scottish Roads Works Register Management Group and representatives from the Society of Chief Officers of Transportation in Scotland (SCOTS) and the National Joint Utility Group (NJUG).

8. Section 163A of NRSWA requires the Scottish Ministers to consult such persons and road works authorities as they consider appropriate before making the Regulations. The Scottish Government consulted roads authorities and undertakers on this instrument during November 2006 and again in December 2007 and received 5 responses on each occasion from a range of stakeholders who reiterated their satisfaction with the method of calculation and commented that it represented an equitable split between roads authorities and undertakers at the present time. A number of minor changes were made to the draft instrument following the consultation in 2006 to assist in making the amounts more transparent by listing them within a Schedule, tying the amounts to relevant apparatus and to achieve the correct ratio split of total contributions between roads authorities and undertakers.

Financial Effects

9. Careful consideration has been given to ensuring that the costs of keeping the register (£775,299 for 2008/09) are balanced by the income received from users. While the basis for calculating the prescribed fees and amounts remains consistent with the existing arrangements a change in VAT liability resulting from the register being placed upon a statutory footing means that an additional amount of approximately £100,000 in total per annum has to be collected from users to cover costs. This will be divided amongst all 61 roads authorities and utilities that currently use the register based pro-rata on the number of notices placed on the register.

10. New users will contribute to the funding of the Register on a similar basis to existing users.

11. It is intended that the funding of the register will be reviewed on an annual basis and the appropriate changes will be reflected in a further instrument under these powers

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