

EXECUTIVE NOTE

The Road Works (Settlement of Disputes and Appeals against Directions) (Scotland) Regulations 2008 SSI/2008/89

1. The above instrument was made in exercise of the powers conferred on the Scottish Ministers by sections 115(2A), 115A(5), 117(7), 120(6), 121(5), 133(2), 143(3), 155(3), 157A and 163(1) of, and paragraphs 2(1) and 12(2) of Schedule 6 to, the New Roads and Street Works Act 1991 (“NRWSA”) and section 18(3) of the Transport (Scotland) Act 2005 (“the 2005 Act”). This instrument is subject to the negative resolution procedure.

Policy Objectives

2. Part 2 of the 2005 Act aims to improve the co-ordination, planning and quality of road works carried out in Scotland and provides a statutory framework for improvements to road works.

3. This instrument prescribes the Scottish Road Works Commissioner (“the Commissioner”) to settle certain disputes and questions arising under NRSWA. Those questions or disputes to be settled by the Commissioner are those that arise in relation to consent to contravene restriction on works following substantial road works, consent as to the placing of apparatus and exercise of powers in relation to protected roads, the meaning of “reasonable period” for the purposes of charges for prolonged road works, the measures necessary where apparatus is affected by major works, disputes involving costs and expenses and roads with special engineering difficulties. However, where one of the parties to such a question or dispute is the Scottish Ministers (acting in their capacity as the roads works authority for trunk roads), given their role in appointing the Commissioner, that question or dispute shall be settled by arbitration (regulation 2).

4. This instrument also prescribes arbitration as the method of settling disagreements involving the duty to provide the Commissioner with information contained in section 18 of the 2005 Act (regulation 3).

5. Furthermore, the instrument also prescribes the procedure to be followed when appealing against directions as to the timing of works and as to the placing of apparatus (regulation 4). These appeals are to the sheriff by way of summary application and may be brought within 28 days from the direction having been given. The sheriff may dismiss the appeal or allow it and quash or vary the directions and the decision of the sheriff is final.

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 oversee the development of secondary legislation required to implement the road works provisions of the 2005 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. In collaboration with RAUC(S), a working group was formed in March 2005 to inform this instrument and associated Code of Practice. This group had equal representation from both road works authorities and undertakers. Recommendations from this group have been developed in consultation with key stakeholders and scrutinised by the steering group.

9. In accordance with section 163A of NRSWA the Scottish Government consulted on this draft instrument during November 2006 and again in February 2008 and received a total of 20 and 8 responses respectively from a wide range of stakeholders. A number of minor changes were made to the draft instrument following consultation.

Financial Effects

10. There will be no costs associated with taking a dispute to the Commissioner for settlement. The costs associated with the formal arbitration procedure will apply in the limited number of cases expected. Similarly, the costs associated with a resolution by a Sheriff shall be in accordance with standard procedures.

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