

EXECUTIVE NOTE

The Transport (Scotland) Act 2005 (Commencement No. 4) Amendment Order 2008 SSI/2008/90 (C.8)

1. The above instrument was made in exercise of the powers conferred by sections 52(4) and 54(2) of the Transport (Scotland) Act 2005. The instrument is not subject to procedure in the Scottish Parliament.

Policy Objectives

2. This instrument, at article 2(a), inserts several transitional provisions into the Transport (Scotland) Act 2005 (Commencement No. 4) Order 2008 which are necessary to ensure a smooth transition into the new Scottish Road Works Register (“the SRWR”) which is established on 1st April 2008. The transitional provisions are related to the commencement of certain sections of the Transport (Scotland) Act 2005 (“the 2005 Act”) which insert new provisions into the New Roads and Street Works Act 1991 (“the 1991 Act”) in relation to the SRWR and duties on road works authorities and undertakers to enter certain information on it.

3. New articles 3(1) and (2) provide that where undertakers give notice pursuant to sections 113 and 114 of the 1991 Act (which relate to advance notice of certain road works and notice of starting date of road works respectively) prior to 1st April 2008, then nothing in the modifications made to those sections by the 2005 Act (or in any regulations made under those sections) shall require them to give further notices in relation to the road works in question. New article 3(3) provides that notwithstanding section 19(1) of the 2005 Act (the Scottish Road Works Register) coming into force on 1st April 2008, nothing in section 112B(1) of the 1991 Act shall require road works authorities to enter particulars of a road in the SRWR, which are not in that Register on 1st April 2008, until 1st October 2008. New article 3(4) provides that, notwithstanding section 19(1) of the 2005 Act coming into force on 1st April 2008, nothing in 112B(2) of the 1991 Act (or in any regulations made under that section) shall apply to proposals by road works authorities to execute works in a road which is non-traffic sensitive, provided those road works start prior to 1st October 2008.

4. Article 2(b) of the instrument amends the extent to which section 22 of the 2005 Act comes into force on 1st April 2008.

5. In the Road Works (Scottish Road Works Register, Notices, Directions and Designations) (Scotland) Regulations 2008 (made at the same time as this Order) the Scottish Government originally intended to use the enabling power at section 117(1) of the New Roads and Street Works Act 1991 as amended by section 22(1)(a) of the 2005 Act to prescribe a time period for the restriction on works following substantial road works. However, a review of section 22(1)(a) of the 2005 Act highlights that the textual amendment it seeks to make does not work and therefore the enabling power is not available to use. As such article 2(b) amends the Transport (Scotland) Act 2005 (Commencement No. 4) Order 2008 so that section 22 under exception of subsection (1)(a) is brought into force on 1st April 2008. This has the effect of leaving section

117(1) of the 1991 Act as it currently stands (ie with a 12 month restriction period) which is acceptable from a policy perspective. The Scottish Government will keep the matter under review and will bring forward amendments to the 2005 Act if they consider it appropriate.

Consultation

6. There has been no consultation on the instrument.

Financial Effects

7. The instrument has no financial effects on the Scottish Government, local government or on business.

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