

## **EXECUTIVE NOTE**

### **The Scottish Road Works Commissioner (Imposition of Penalties) Regulations 2007 SSI/2007/411**

1. The above instrument will be made in exercise of the powers conferred on the Scottish Ministers by section 119A of the New Roads and Street Works Act 1991 (c.22) (“the 1991 Act”). Section 119A was inserted into the 1991 Act by section 25 of the Transport (Scotland) Act 2005 (asp 12). This instrument is subject to the negative resolution procedure.

#### **Policy Objectives**

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

3. The intention is for the Scottish Road Works Commissioner to only issue penalties where long-term systematic failure occurs in duties to co-ordinate or co-operate by a road works authority or statutory undertaker respectively.

4. This instrument makes provision allowing for the imposition of penalties by the Scottish Road Works Commissioner where road works authorities and undertakers fail to comply with the duties imposed on them by sections 118 and 119 of the 1991 Act respectively. These are the general duties of co-ordinating works (for road works authorities) and co-operation (for undertakers) respectively. The instrument also makes provision as to the level of penalties, the payment of such penalties, notification and enforcement of penalties and appeals against the imposition of penalties.

#### **Consultation**

5. The Executive 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.

6. The Executive set-up a steering group. The steering group comprising of members of the Scottish Executive, Co-Chairs of Roads Authorities and Utilities Committee (Scotland) (RAUC(S)), the Chair of the Scottish Road Works Register Management Group and representatives from the Society of Chief Officers of Transportation in Scotland (SCOTS) and the National Joint Utility Group (NJUG).

7. 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

8. The Executive consulted on this draft instrument during November 2006 and received 20 responses from a wide range of stakeholders. The working group met to consider the responses and as a result a number of changes were made to the draft instrument. It is believed that extensive consultation with the user community will ensure this instrument is fit for purpose.

## **Financial Effects**

9. The potential maximum penalty imposed would be up to a maximum of £50,000. The imposition of this penalty will have a punitive impact on the recipient.

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