

Final Business and Regulatory Impact Assessment

Title of Proposal

The Scottish Road Works Register (Prescribed Fees) Regulations 2015

Purpose and intended effect

- **Background**

The New Roads and Street Works Act 1991 enables Scottish Ministers to provide, by Regulation, that a payment is made to the Scottish Road Works Commissioner for access to the Scottish Road Works Register (“the register”).

These regulations set the levels of prescribed fees and amounts that can be levied as a charge to those accessing the register. The register is a central tool for road works authorities and utility companies to use to assist them in the planning and coordination of works on Scottish roads. Road authorities and utility companies (the latter group are commonly referred to as “statutory undertakers” in the legislation) have a duty to submit information relating to road works in the form of notices placed onto the register.

- **Objective**

The Regulation will change the overall fee figure used in the formula to calculate the proportion of the cost of providing the register to be paid by individual roads authorities and statutory undertakers.

The fee is calculated using a series of formulas that share the cost of running the register annually between the roads authorities (who between them bear 35% of the cost) and the undertakers (who make up the remaining 65%).

- **Rationale for Government intervention**

The fees are designed to cover the cost of operating and maintaining the register. The fee is calculated using a series of formulas that share the cost of running the register annually between the roads authorities and utilities on the basis of a 35% / 65% split. This formula was developed and agreed by the road users’ community through the Road Authorities and Utilities Committee (Scotland) (“RAUC(S)"). The fee is calculated based on activity in the previous year taking account of anticipated costs of running and providing the service of the register.

The coordination of road works through the use of the register helps meet the following strategic objectives within the National Performance Framework:-

- We live in well-designed, sustainable places where we are able to access the amenities and services we need;
- We value and enjoy our built and natural environment and protect it and enhance it for future generations; and

- Our public services are high quality, continually improving, efficient and responsive to local people's needs.

Consultation

- **Within Government**

The proposals do not impact on any other part of Scottish Government. However, the Scottish Road Works Commissioner, an independent public body, was consulted on the cost of operating the Register.

- **Public Consultation**

A 12 public week consultation took place between 17 October 2014 and 9 January 2015.

Business

The parties affected by the change (roads authorities and utility companies) were informed directly by email when the consultation launched. We also set up a consultative working group of stakeholders comprising representatives of Road Authorities and Utilities to consider whether the current arrangements ought to be changed.

Options

Option 1 - Do Nothing i.e. leave the fees at their current level

Option 2 - Amend the current arrangements in line with the evidence provided by relevant stakeholders who had a strong desire to move away from the annual cycle of fee setting and have instead regulations which spanned a number of years to introduce an element of certainty around the level of fees and fee income. The Scottish Road Works Commissioner calculated the estimated cost of operating the Register during 2015-16 and 2016-17.

In 2011/12 and 2012/13 excess fee income accrued in these periods was set aside as deferred income with the agreement of the roadworks community to fund the re-tendering of the Scottish Road Work Register service contract in 2016/17. However a recent decision taken the Scottish Ministers that they will fund the cost of re-tendering the service provision contract means that the deferred income can be used to reduce the level of fee income that might otherwise be required over the next few years.

The cost of operating the register in 2015-16 has been estimated at £855,838. This figure has been reduced to £783,150 by using some of the deferred income. Similarly it is calculated that £919,179 will be required to operate the register in 2016-17, and again this figure has been reduced to £831,566 by using deferred income.

Sectors and groups affected

Option 1 – Roads authorities and utility companies

Option 2 - Roads authorities and utility companies

Benefits

Option 1 – There are no benefits associated with pursuing option 1. However there is a risk that the full cost of operating the register in 2015-16, and 2016-17 would not be covered.

Option 2 - Setting the fee at the appropriate level ensures that the cost of providing the register is fully covered. It allows excess income paid by register users in earlier years to be used to reduce the overall level of fee income that has to be recovered in 2015-16, and 2016-17.

Costs

The level of fees paid by users depends on a number of factors but crucially they rise for utility companies with the number of notices placed onto the register. A formula developed with the road works community shares the estimated cost of operating the register across utility company and road authority users. The fees paid by users are, therefore, linked to both the overall fee income required and, in the case of utility companies, the number of notices placed onto the register, and in the case of road authorities a proportion of the total fee income required having taken account of fixed amounts (“prescribed amounts”¹) that each Road Authority is required to pay.

Option 1 – Although the overall fee would remain the same, that actual amount paid by each utility company may differ going forward since the actual prescribed fee paid depends on the number of Notices placed on the Register and the proportion this represents of the overall number of notices placed onto the register by all users. In general terms, the more notices placed onto the register, the higher the prescribed fee will be for an individual utility company.

However under this option, there is a risk that the cost of running the register will not be recovered through fee income. This may jeopardise the Scottish Road Work Commissioners overall budget and may require further grant-in-aid payments from the Scottish Ministers to make up any shortfall.

Option 2 – Under this option both road authorities and utilities face the prospect of paying a higher fee than those paid in 2014-15 as the target level of fee income is increasing from £759,795 (the 2014-15 figure) to, £783,150 for 2015-16 and £831,566 in 2016-17. However, the result fees will not be as high as they otherwise might have been as deferred fee income originally collected in 2011-13 is being used to reduce the amount of fee income required.

To illustrate what the proposed changes might mean, the changes have been used to calculate what level of future fees will be required from a selection of utilities and road authorities assuming no change in the level of actual works undertaken:-

The effect of the proposed changes are illustrated in the table below:-

Table 1 - Effect of proposed changes

¹ See Regulation 3 of the Scottish Road Works Register (Prescribed Fees and Amounts) Regulations 2008

Sample Organisation	2014-15 £	2015-16 £	% Increase or Decrease	2016-17 £	% Increase or Decrease
Power utility	41,180	41,511	+1%	44,661	+8%
Water utility	108,145	98,457	-9%	107,176	-1%
Gas utility	51,273	48,494	-5%	52,288	2%
Power utility	18,163	16,783	-8%	17,452	-4%
Road authority	28,757	29,504	+3%	32,216	+12%
Road authority	13,467	13,788	+2%	14,950	+11%

It should be noted that the amount of notices being placed onto the register has increased due to the roll out of super-fast broadband across Scotland. This means that telecoms utilities will pay proportionately higher fees due to an increased number of relevant works/notices, and that other utilities will pay a proportionately lower fee than they might otherwise have as their level of works/notices represents a smaller proportion of the overall total.

If the prescribed fee not monitored and set at the appropriate level and varied where required there is a risk on the one hand, that the cost of providing the register will not be recovered, and on the other, that roads authorities and statutory undertakers may pay more money than they otherwise might be required to pay.

Any change made under option 2 will only impact on utility companies and roads authorities.

Option 1 – There would be no additional cost to business per se, but equally they would not get the benefit of using deferred income to reduce the level of fees they might otherwise be required to pay. Of course, even under this option there exists the potential for individual fees paid by utility companies to rise as the fees paid are in proportion to the number of notices placed on the register.

Option 2 – Any additional cost in running the register will be apportioned between the roads authorities and utility companies.

Scottish Firms Impact Test

Face to face discussions have taken place within the auspices of the working group which has been set up involving both representatives of the road authorities and utility companies. These discussions have helped inform decisions on what to include in the proposed regulations. Since all businesses affected are represented on the working group no further face to face interviews were carried out.

Competition Assessment

We have used the Competition & Markets Authority Competition Filter questions to assess the competition impacts of any proposals and have been able to answer these in the negative. We are, therefore, able to assert that the proposals will neither directly or indirectly limit the number or range of suppliers, limit the ability of suppliers to compete or reduce suppliers' incentives to compete vigorously.

Test run of business forms

No new business forms have been created.

Legal Aid Impact Test

Legal Aid Board has confirmed that this will have no impact on legal aid expenditure.

Enforcement, sanctions and monitoring

The Scottish Road Works Commissioner is responsible for the collection of fees set under these regulations.

Implementation and delivery plan

The Regulations will come into force on 1 April 2015.

- **Post-implementation review**

The working group will continue during 2015 to consider the level of fees set with a view to considering what future changes may be required.

Summary and recommendation

The proposed fees within the 2015 Regulations secure the operation of the Scottish Road Works Register for 2015-16 and 2016-17, without any adverse impact to business. It is recommended that the new level of prescribed fees are set based on estimated costs of running the register being set at £783,150 for 2015-16 and £831,566 in 2016-17.

- **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	Operator costs are unlikely to increase. However, the cost of running the Register may not be met through fee income.	Road Authority and Utility company fees may not increase but any shortfall will become a budget pressure on the Scottish Road Works Commissioner and may require additional financial support from the Scottish Government.
2	The cost of running the Register will be met and users will benefit from the use of deferred income to lower the level of fees that might otherwise be required.	Utility company and Road Authority costs may increase but not to the extent that they may have risen to had deferred income not been used to reduce the level of fee income required.

Declaration and publication

I have read the impact assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed:**Date:**

Derek Mackay
Minister for Transport and Islands

Scottish Government Contact point:-

Ewen Milligan
Transport Scotland
Area 2D (north)
Victoria Quay
Edinburgh
EH6 6QQ

Tel: 0131 244 0361
Ewen.milligan@transportscotland.gsi.gov.uk