

# Net Zero, Energy and Transport Committee

9<sup>th</sup> Meeting, 2023 (Session 6)

Tuesday 14 March 2023

SSI cover note for: The Road Works  
(Reinstatement Quality Plans, Qualifications of  
Supervisors and Operatives and Miscellaneous  
Amendments) (Scotland) Regulations 2023

## SSI 2023/33

<b>Title of Instrument:</b>	<a href="#"><u>The Road Works (Reinstatement Quality Plans, Qualifications of Supervisors and Operatives and Miscellaneous Amendments) (Scotland) Regulations 2023</u></a>
<b>Type of Instrument:</b>	Negative
<b>Laid Date:</b>	9 February 2023
<b>Circulated to Members:</b>	10 February 2023
<b>Meeting Date:</b>	14 March 2023
<b>Minister to attend meeting:</b>	No
<b>Motion for annulment lodged:</b>	No
<b>Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee?</b>	Yes
<b>Reporting deadline:</b>	27 March 2023

1. An electronic copy of the Regulations is available at:  
<https://www.legislation.gov.uk/ssi/2023/33/contents/made>

2. A copy of the Scottish Government's Explanatory and Policy Notes are included in **Annexe A**.

## Recommendation

3. The Committee is invited to consider any issues which it wishes to raise on this instrument.

## Purpose

4. The purpose of this instrument is to—

- implement two new road works measures (reinstatement quality plans and qualification requirements for supervisors and operatives);
- alter existing provisions requiring the timescale for information about works being started or completed to be entered in the national register of road works, and to clarify the restriction period following resurfacing works as three years/one year for carriageway and footways respectively; and
- amend older road works instruments to correct references to out of date documents, and to products no longer in use.

## Delegated Powers and Law Reform Committee consideration

5. At its meeting on 28 February 2023, the Committee agreed to draw the attention of Parliament to the instrument—

- Under the general reporting ground for a cross referencing error in regulation 5; and
- Under reporting ground (h) on the basis references to a code of practice on road works could be clearer.

6. The extract from the report is **Annexe B**.

## Procedure for Negative Instruments

7. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).

8. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument. If the motion is agreed to, the Parliamentary Bureau must then lodge a motion to annul the instrument for

consideration by the Parliament. If that is also agreed to, Scottish Ministers must revoke the instrument. At present no motion to annul has been laid for this instrument.

9. Each negative instrument appears on a committee agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow correspondence to be entered into or a Minister or officials invited to give evidence. In other cases, the Committee may be content simply to note the instrument.

10. If no motion to annul has been laid then, at the conclusion of consideration of the instrument, the Committee will be invited that agree to make no recommendation in relation to the instrument.

Clerks

Net Zero, Energy and Transport Committee

# Annexe A

## Scottish Government Explanatory Note

### EXPLANATORY NOTE

#### (This note is not part of the Regulations)

These Regulations make provision about the reinstatement quality plans (“the plans”) to be entered into the Scottish Road Works Register (“the SRWR”) under section 130A or 130B of the New Roads and Street Works Act 1991 (“the 1991 Act”).

These Regulations also prescribe the qualifications required for the types of work executed by supervisors and trained operatives under section 61B of the Roads (Scotland) Act 1984 (“the 1984 Act”).

These Regulations also make miscellaneous amendments to the Road Works (Reinstatement) (Scotland) Regulations 1992, the Road Works (Inspection Fees) (Scotland) Regulations 2003, the Road Works (Scottish Road Works Register, Notices, Directions and Designations) (Scotland) Regulations 2008 and the Road Works Qualifications of Supervisors and Operatives) (Scotland) Regulations 2017.

Part 2 of these Regulations prescribes processes relating to the plans to be entered into the SRWR under section 130A or 130B of the 1991 Act. Regulation 3 prescribes that when a plan is requested by the Scottish Road Works Commissioner (“the Commissioner”) under section 130A(3) or 130B(2), a person or a roads authority must submit a plan for the Commissioner’s approval within 90 days of the date of the Commissioner’s notice or such other period as the Commissioner may specify (being not less than 30 days from the date of the notice). Regulation 4 provides that the plans approved by the Commissioner must be kept under review for a period of 6 years from the date of the Commissioner’s approval.

Part 3 of these Regulations makes provision in relation to the qualifications needed for the types of work which requires to be executed by supervisors and trained operatives under section 61B of the 1984 Act. It also allows for the operation of rules for the recognition of equivalent qualifications in relation to supervisors and trained operatives found in the European Union (Recognition of Professional Qualifications) Regulations 2015 (“the 2015 Regulations”), which implement in part Directive 2005/36/EC of the European Parliament and of the Council (OJ L 255, 30.9.2005, p. 22) on the recognition of professional qualifications, as amended by Directive 2013/55/EU (OJ L 254, 28.12.2013, p. 132). Regulation 6 provides that a person has a prescribed qualification for a type of work listed in schedule 1 or 2 of these Regulations if the person is qualified in that type of work and the additional types of work specified in regulation 6(1)(b) (for supervisors) or regulation 6(2)(b) (for trained operatives). A person is qualified in a type of work if an approved body has issued a certificate of competence showing that the person has been assessed as having the required level of competence in that type of work (regulation 6(3)(a)) or if a competent authority has issued a certificate of recognition of equivalent qualifications obtained in a relevant European State (regulation 6(3)(b)). Certificates must be

registered in the approved register. Regulation 7 provides for a grace period of two months following the issuing of a certificate or a renewal certificate before registration, during which the person issued with the relevant certificate is deemed to be qualified in the relevant type of work, notwithstanding that the certificate has not been registered or re-registered. Regulation 8 provides for the recognition of equivalent qualifications from other parts of the United Kingdom. Regulation 9 provides for recognition of restricted forms of qualification. Regulation 10 sets out the approved bodies for the purposes of issuing certificates of competence. The register of certificates is kept by the Scottish Qualifications Authority. Registration of a certificate expires after 5 years beginning with the date on which it was issued (regulation 11) but a certificate may be re-registered for any number of further periods in accordance with regulations 12 to 14. A person wishing to re-register a certificate for a type of work must obtain a renewal certificate for that type of work. An approved body may award a person a renewal certificate for a type of work if that person has been assessed or reassessed as having the required level of competence in that type of work (regulation 15). Regulation 16 exempts the Scottish Fire and Rescue Service from the requirement to have one trained operative on site where works it is undertaking involve breaking up the road.

Regulation 17 amends the Road Works (Reinstatement) (Scotland) Regulations 1992 (“the 1992 Regulations”). Regulation 17(2) updates definitions of “Code” and “immediate works”. Publishing 13 Regulation 17(3) to (10) makes amendments to regulations 3 to 5 and 7 to 8 to reflect changes made to the updated Code of Practice in relation to categories of roads, the requirements of materials to be used and standards of work to be observed by undertakers executing road works. Regulation 17(11) inserts regulation 8A into the 1992 Regulations which sets out a guarantee period for permanent reinstatement of a road following road works of 2 years from the date of completion, or 3 years in case of deep excavations, if completed before 1 October 2023, or 6 years from the date of completion (regardless of the depth of reinstatement) if completed on or after 1 October 2023.

Regulation 18(2) amends regulation 3(4)(c) of the Road Works (Inspection Fees) (Scotland) Regulations 2003 by replacing the description of periods after the completion of permanent reinstatement with a reference to the period set out in regulation 8A of the 1992 Regulations. Regulation 18(3) provides for a temporary arrangements for the inspections carried out during the phase of works under regulation 3(4)(c) so that for any permanent reinstatement completed on or after 1 October 2023 but before 1 April 2028 the inspection period under that phase of works is to be 4 years preceding the end of the period specified for those permanent reinstatement works by regulation 8A of the 1992 Regulations.

Regulation 19 amends the Road Works (Scottish Road Works Register, Notices, Directions and Designations) (Scotland) Regulations 2008 (“the 2008 Regulations”) by inserting a definition of “working hours” and providing the requirement for the road works authority under section 112B(2A) of the 1991 Act and for the roads authority under section 112B(6) of the 1991 Act to enter in the SRWR the date on which the works were completed within two working hours of that completion (regulation 19(4) and (6)). Regulation 19(5) provides that under section 112B(5A) of the 1991 Act the date on and time at which the works began must be entered in the SRWR within two working hours of the works beginning. Regulation 19(7) inserts a new regulation 7A

into the 2008 Regulations setting out a requirement for an undertaker under section 114A(2) of the 1991 Act to give notice of the date on and time at which the works began within two working hours of the works beginning. Regulation 19(8) inserts a new regulation 9(1A) into the 2008 Regulations providing new restriction periods for the execution of road works following substantial works carried out in a road. Regulation 19(10) amends regulation 13 of the 2008 Regulations to require an undertaker to give a notice for the purposes of section 129(3) or (4) of the 1991 Act within two working hours of a reinstatement of a road being completed.

Regulation 20 makes miscellaneous amendments to the Road Works (Qualifications of Supervisors and Operatives) (Scotland) Regulations 2017 following the amendments made by the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019 to the operation of rules for the recognition of equivalent qualifications in relation to trained operatives and supervisors under the 2015 Regulations.

A Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from Transport Scotland, 5 Atlantic Quay, 150 Broomielaw, Glasgow G2 8LU and online at [www.legislation.gov.uk](http://www.legislation.gov.uk).

## Scottish Government Policy Note

### POLICY NOTE

#### THE ROAD WORKS (REINSTATEMENT QUALITY PLANS, QUALIFICATIONS OF SUPERVISORS AND OPERATIVES AND MISCELLANEOUS AMENDMENTS) (SCOTLAND) REGULATIONS 2023

#### SSI 2023/33

The above instrument was made in exercise of the powers conferred by sections section 61B(9) of the Roads (Scotland) Act 1984 and sections 112B(1), (2A), (5A) and (6), 114A(2), 117(1), 126, 129(3), (4) and (5A), 130, 130C(2) and (3), 134 and 163(1) and (3) of the New Roads and Street Works Act 1991. The instrument is subject to the negative procedure.

The purpose of this instrument is to implement two new road works measures (reinstatement quality plans and qualification requirements for supervisors and operatives), to alter some existing provisions, requiring the timescale for information about works being started or completed to be entered in the national register of road works, and to clarify the restriction period following resurfacing works as three years/one year for carriageway and footways respectively. This instrument also amends older road works instruments to correct references to out of date documents, and to products no longer in use.

### Policy Objectives

The policy objectives of this multi-topic instrument are varied, within the policy area of road works. The New Roads and Street Works Act 1991 (the “1991 Act”), and the Roads (Scotland) Act 1984 (the “1984 Act”) as amended by the Transport (Scotland) Act 2019 (“the 2019 Act”), make statutory provision for two new duties applicable to undertakers, roads authorities and persons working in roads and allow for particulars to be prescribed in regulations. The instrument also provides an opportunity for a number of minor amendments to existing regulations required as a result of extensive consultation and engagement with the road works community.

### *Reinstatement Quality Plans*

The first of these duties is a requirement to hold an approved ‘Reinstatement Quality Plan’ (“RQP”) which details how an organisation meets the current standards in carrying out safe and efficient road works. The requirement to produce a plan applies to anyone (other than a roads authority) who is proposing to carry out works involving reinstatement of the road by default under section 130A(2) of the 1991 Act, and to any roads authority asked to supply one by the Scottish Road Works Commissioner (“the Commissioner”) under section 130B(2) of the 1991 Act. The Commissioner is also the approver of the plan, and the legal keeper of the Scottish Road Works Register (“SRWR”), where the plan must be entered. Each RQP covers the internal process, procedure and structures in place which allow the body to carry out quality work. It does not create new obligations or new specification for the carrying out of reinstatement work in roads. The instrument sets out that the Commissioner may require a plan to be entered by way of a notice entered into the SRWR, and specifies by notice the date by which the recipient must enter a plan. It also provides that the plans must be kept under review for 6 years. The details of the required plan are provided for in the associated Reinstatement Quality Plan Code of Practice.

### *Qualifications of Supervisors and Operatives*

The second new duty is in regard to qualifications of operatives and supervisors, required when carrying out works for roads purposes under section 61B(2) of the 1984 Act, inserted by the 2019 Act. The intention of the 2019 Act was to place directly equivalent requirements on any person working in the road, as currently exist under the 1991 Act for undertakers working in Scotland. The provisions detailed in this instrument align closely with existing provisions for undertakers under the Road Works (Qualifications of Supervisors and Operatives) (Scotland) Regulations 2017 and take into account recent changes in UK legislation following EU Exit, which amends rules of mutual recognition of qualifications for transient workforces. This instrument supports that policy aim by establishing the required equivalent framework.

### *Miscellaneous Road Works Amendments*

Miscellaneous amendments are required in four road works instruments - the Road Works (Reinstatement) (Scotland) Regulations 1992 (“the 1992 Regulations”), the Road Works (Inspection Fees) (Scotland) Regulations 2003 (the “2003 Regulations”), the Road Works (Scottish Road Works Register, Notices, Directions and Designations) (Scotland) Regulations 2008 (the “2008 Regulations”) and the

Road Works (Qualifications of Supervisors and Operatives) (Scotland) Regulations 2017 (the “2017 Regulations”).

The first arises within the 1992 Regulations which contain outdated and incorrect references. In order to make most efficient use of Parliamentary time, the instrument aims to address these issues, such as a reference to ‘macadam’ a brand name no longer in use, and a reference to the Specification for Openings in Highways (covering only England and Wales) instead of the correct reference to the Specification for the Reinstatement of Openings in Roads.

The 1992 Regulations are underpinned by the statutory code of practice, the Specification for the Reinstatement of Openings in Roads 2019 (the “SROR”). Successive road works community drafting groups have raised the issue that as the 1992 Regulations give very specific detail on chapter headers for the associated SROR, their hands are effectively tied in a relatively unimportant formatting matter. In agreement with the Commissioner under his ‘Good Practice’ remit, amendments are made to the 1992 Regulations, allowing freedom of chapter structure and name going forward. Furthermore, the guarantee period following permanent reinstatement works, (the period during which an undertaker is responsible for a reinstatement they have created), is currently only set out in the SROR. This instrument makes provision for the guarantee period to be set out in the 1992 Regulations.

As part of a separate Ministerial commitment to raise the period of guarantee from two years to six years, a number of small changes are required in both the 1992 Regulations and the 2003 Regulations. The new six year period will require a minimum of six years to bed in, as it has required undertakers to amend their supply chain contracts to account for the new, longer, guarantee period. This has been managed on a phased basis, with the road works community itself selecting the implementation date to afford themselves a reasonable period to affect these contract changes. By allowing the community itself to select the commencement date, it has allowed, in many cases, for the requirements to be built into new contracts created at the start of new investment periods, avoiding having to introduce contract changes mid investment period. This has required the selection of one agreed date to work to, which if amended or the guarantee period length altered again, would result in widespread contract changes which the initial ‘blueprint’ exercise sought to avoid. Therefore, the 1992 Regulations prescribe the current guarantee period in line with the SROR for completions before 1 October 2023 and for the new period of 6 years, thereafter.

At present there is existing provision in the 2003 Regulations for three ‘sample’ inspections at three separate stages of work, during works occurring (‘Sample A’), when work is less than six months old (‘Sample B’) and one within three months before the end of the responsibility period (‘Sample C’) which is two years for shallow excavations and three years for deep excavations. This responsibility period is now being simply replaced with a reference to the guarantee period set out in the 1992 Regulations.

However, when guarantee periods move from two/three to six years, it will have the consequence of leaving no available works for end of guarantee period inspection, for approximately four years. This is due to all works available during that time either



being too old for the previous regime or too young for the new one. In order to continue to operate the sample regime as close to how it currently operates as possible, and without losing the sample C inspection entirely, temporary arrangements have been agreed where, for reinstatements completed on or after 1 October 2023 but before 1 April 2028, sample C inspections will take place on any appropriate work over the age of two years old. After this period, Sample C inspections will return to taking place within three months of the end of the guarantee period. Provision to that effect was inserted in the 2003 Regulations.

The 2008 Regulations are amended to prescribe the timescale for when 'works closed' (Completion Notices) and 'Actual Start' (Commencement Notices) are entered in the SRWR. The SRWR is the means through which roads authorities and undertakers plan and coordinate work, in line with their legal duties to co-operate and co-ordinate under the 1991 Act. The timescale for update on the actual start and completion, set out in the code of practice, is currently the following working day (a period first agreed in 1991). Amendments made to sections 112B and 129 of the 1991 Act and a new section 114A of the 1991 inserted by the 2019 Act allow for this period to be prescribed. This instrument set out the agreed new limit of 'two hours' after the event taking place.

Another amendment to the 2008 Regulations provides for a new restriction period following major carriageway/footway works. This is the period wherein a roads authority can restrict utility works on newly laid surfaces, other than to undertake urgent or emergency works, or to provide a new customer connection not known about before the major work took place. A period of three years in carriageways and one year in footways was agreed by the road works community prior to 2004, with both the Code of Practice for Co-ordination and the SRWR being updated to reflect these periods. They were discussed and agreed as part of the preparation for the Transport (Scotland) Act 2005, but not taken forward at that time. The provisions of restriction period within this Instrument provide that overdue update.

Finally, minor amendments have been made to the 2017 Regulations as a consequence of amendments made by the Recognition of Professional Qualifications (Amendment etc.) (EU Exit) Regulations 2019 to the operation of rules for the recognition of equivalent qualifications in relation to trained operatives and supervisors under the European Union (Recognition of Professional Qualifications) Regulations 2015.

## **Consultation**

To comply with the requirements of Section 163A of the 1991 Act, the Scottish Government carried out a 12 week public consultation in relation to a number of roadworks reform measures, which also sought views on these topics and others. "Raising Standards and Improving the Quality of Road Works in Scotland 2017, A Consultation" ran for 12 weeks and the subsequent "Analysis of Consultation Responses" was published by Transport Scotland in 2018.

This 2017 consultation followed an earlier 2013 consultation which looked at the same broad topic. The "Strategic Consultation on Road Works on Scottish Roads"

launched in April 2013. With the following “Analysis of Consultation Responses” published by Transport Scotland in 2014.

A list of respondents to both consultations, the majority of whom agreed to the release of their response, is available on the Transport Scotland website in the published analysis of both consultations. A list of 80 respondents and their responses from the 2017 consultation is available here:

[https://consult.gov.scot/transport-scotland/quality-of-road-works-in-scotland/consultation/published\\_select\\_respondent](https://consult.gov.scot/transport-scotland/quality-of-road-works-in-scotland/consultation/published_select_respondent)

A further 8 organisations opted not to have their responses published, these were three utility firms, two local roads authorities, and three supply chain contractors. A total of 88 responses were received. Most came from roads authority representatives, utilities representatives and contractors.

The underlying framework and timetable of implementation has been specifically discussed and agreed through the road works community body, the Roads Authorities and Utilities Committee (Scotland) (“RAUC(S)”) whose members also form the focus group the Transport Scotland Policy Working Group. This specific working group devised the order of implementation for the various reform measures arising from both the 2019 Act and the associated reform measures from the 2017 consultation.

RAUC(S) working groups have been engaged in making the necessary changes to the existing road works Codes of Practice since 2020, and in set up of a new group to provide a first draft of the new “Reinstatement Quality Plans Code of Practice”, with support from the Scottish Road Works Commissioner. This work took place in anticipation of this instrument and was approved by the Commissioner and published on his website in January 2022. Following the implementation of this secondary legislation, it will be recommended to Scottish Ministers as the Code of Practice in terms of S130C of the 1991 Act, (as inserted by S118 of the 2019 Act).

The changes to the 1992 Regulations have been scheduled to align with a Commissioner led, road works community review/redraft of the 2019 Code. Direct discussion with the Community drafting group (chaired by Scottish Water and the Joint Authorities Group UK, jointly) and with the Commissioner’s office took place in 2022. The changes to ‘required content’ have largely arisen from the priorities assigned to various content by the drafting group, which was supported by a Commissioner issued ‘technical consultation’ targeted at specific RAUC(S) community organisations and engineers. The exercise took place between September and October 2021 and sought comments on the current version of the code. A feedback form was circulated at both Area and National RAUC meetings in 2021, and also issued to the Road Works Commissioner’s primary contact mailing list. A total of 21 responses were received by the Commissioner’s office, nine from utility firms, utility organisations and contractors, ten from roads authorities and two from Scottish Government directorates.

The temporary arrangements for sample C inspections were discussed directly with the Commissioner, the Scottish Roads Authorities Group and the Policy Development Group, before being announced to the wider community. The

Commissioner has outlined his priority requirement for Sample C inspections to continue to take place, in order to support the established quality measures in place for the sector.

### **Impact Assessments**

There is no aspect of the proposals which have a differential or discriminatory impact on equality groups, islands or individuals.

### **Financial Effects**

A Business and Regulatory Impact Assessment (BRIA) has been completed and will be published with this instrument. The impact of this policy may result in some community wide, short term administrative burden, such as in the work required to create quality plans, or to roll out new procedures to update works notices more expediently, however, the road works community have agreed the timetable of the implementation of the measures, and have allowed themselves a long period in which to pre-prepare for their coming into force.

Scottish Government  
Transport Scotland - Transport Strategy and Analysis

February 2023

## **Scottish Government - Other documents**

- [Business and Regulatory Impact Assessment](#)

## Annexe B

### EXTRACT FROM THE [DELEGATED POWERS AND LAW REFORM COMMITTEE'S REPORT ON SUBORDINATE LEGISLATION CONSIDERED ON 28 FEBRUARY 2023](#)

#### **Road Works (Reinstatement Quality Plans, Qualifications of Supervisors and Operatives and Miscellaneous Amendments) (Scotland) Regulations 2023 (SSI 2023/ 33)**

4. The instrument implements road works reform in various policy areas.
5. The Committee identified an error in regulation 5. The reference to regulation 7 in the definition of “type of work” should be to regulation 6.
6. The Scottish Government proposes to rectify this error by way of a correction slip.
7. The instrument amends regulation 3(2)(f) of the Road Works (Scottish Road Works Register, Notices, Directions and Designations) (Scotland) Regulations 2008 which refers to the statutory code of practice issued in 2003, entitled the Specification for the Reinstatement of Openings in Roads.
8. The instrument also amends the Road Works (Reinstatement)(Scotland) Regulations 1992 to insert a definition of the current statutory code of practice issued in 2019.
9. The Scottish Government has confirmed that the intention is that the 2008 Regulations also refer to the current version of the code issued in 2019, not the code issued in 2003.
10. Consequently, the 2008 regulations appear to refer to an obsolete code of practice.
11. A copy of the correspondence can be found in the Annex.
12. The lead committee for this instrument is the Net Zero, Energy and Transport Committee.
- 13. The Committee draws the instrument to the attention of the Parliament under the general reporting ground for a cross-referencing error in regulation 5.**
- 14. The Committee notes that the Scottish Government intends to correct this error by correction slip.**
- 15. The Committee also draws the instrument to the attention of the Parliament on reporting ground (h) in that it could be clearer that regulation 3(2)(f) of the Road Works (Scottish Road Works Register, Notices, Directions and Designations) (Scotland) Regulations 2008, as amended by this instrument, is intended to refer to the current version of the statutory code of practice**

entitled the Specification for the Reinstatement of the Openings in Roads, rather than the 2003 version.

**16. The Committee calls on the Scottish Government to clarify the position at a suitable legislative opportunity.**

## Annex

### **Road Works (Reinstatement Quality Plans, Qualifications of Supervisors and Operatives and Miscellaneous Amendments) (Scotland) Regulations 2023 (SSI 2023/ 33)**

On 14 February 2023, the Committee asked the Scottish Government:

The instrument implements road works reform in various policy areas. Part 3 introduces prescribed qualifications in specified areas for supervisors of road works and operatives carrying out road works. Regulation 5 (Interpretation of Part 3) provides definitions of terms. The definition of “type of work” means any of the types of work listed in schedules 1 and 2 and regulation 7(1)(b) and (2)(b). There is no sub-paragraph 1(b) or 2(b) in regulation 7.

1. Should the reference properly be to regulation 6?

Part 4 of the instrument amends several statutory instruments relating to road works. Regulation 19 amends SSI 2008/88: The Road Works (Scottish Road Works Register, Notices, Directions and Designations) (Scotland) Regulations 2008. Regulation 19(3) amends regulation 3(2)(f) of the 2008 Regulations in order to omit references to paragraphs S1.3 and S1.4 of the statutory Code of Practice entitled Specification for the Reinstatement of Openings in Roads (October 2003). Regulation 17(2) of the instrument amends the Road Works Reinstatement (Scotland) Regulations 1992 at regulation 2(1) to provide that “the Code means the code of practice entitled “Specification for the Reinstatement of Openings in Roads” approved by the Scottish Ministers in February 2019 as revised and reissued from time to time” thereby replacing the earlier Code dated October 2003. Paragraphs S1.3 and S1.4 in the 2019 Code are not relevant to the subject matter of regulation 3(2)(f) of the 2008 Regulations. The Code dated October 2003 is no longer available for access on the Scottish Road Works Commissioner’s website.

2. Is the intention that the reference to the Specification for the Reinstatement of Openings in Roads in regulation 3(2)(f) of the 2008 Regulations is to the current version of the code of practice approved by the Scottish Ministers in February 2019? If so, is that sufficiently clear, given that the 2008 Regulations retain reference to the October 2003 version?

*Please confirm whether any corrective action is proposed, and if so, what action and when.*

On 21 February 2023, the Scottish Government responded:

“1. The reference in the definition of “type of work” (Regulation 5) in Part 3 of the

instrument should indeed be to regulation 6(1)(b) and 2(b) and not to regulation 7. This is a typing error which was not identified before the instrument has been made. The Scottish Government propose that this error is rectified by way of a correction slip.

2. We can confirm that the intention that the reference to the Specification for the Reinstatement of Openings in Roads in regulation 3(2)(f) of the 2008 Regulations is to the current version of the code of practice approved by the Scottish Ministers in February 2019. The Scottish Government position is that it is sufficiently clear which code of practice is referred to in regulation (3)(2)(f) when read with regulation 2(3) of the 2008 Regulations which provides that a reference to that code of practice operates as a reference to the document as revised or re issued from time to time.”