

Net Zero, Energy and Transport Committee

9th Meeting, 2024 (Session 6)

Tuesday, 5 March 2024

Cover note: The Road Works (Scottish Road Works Register Fees and Miscellaneous Amendment) Regulations 2024 (2024/23)

Title of Instrument: [The Road Works \(Scottish Road Works Register Fees and Miscellaneous Amendment\) Regulations 2024 \(2024/23\)](#)

Type of Instrument: Negative

Laid Date: 25 January 2024

Circulated to Members: 26 January 2024

Meeting Date: 5 March 2024

Minister to attend meeting: No

Motion for annulment lodged: No

Drawn to the Parliament's attention by the Delegated Powers and Law Reform Committee? No

Reporting deadline: 11 March 2024

Recommendation

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

Background

2. An electronic copy of the Regulations is available at: <https://www.legislation.gov.uk/ssi/2024/23/contents/made>

3. Copies of the Scottish Government explanatory and policy notes are included in the **Annexe**.

4. The purpose of this instrument is to make two minor amendments to existing road works legislation—

- To prescribe a new fee for the financial year 2024/25 for access to the Scottish Road Works Register;
- To add two new bodies to the existing list of bodies approved to issue certificates of competence (qualifications) in respect of road works.

Delegated Powers and Law Reform (DPLR) Committee consideration

5. At its meeting on 6 February 2024, the DPLR Committee considered the instrument and determined that it did not need to draw the attention of the Parliament to the instrument on any grounds within its remit.

- [Read the Official Report – DPLR Committee, 6 February 2024 \(parliament.scot\)](#)
- [Read the Report – 10th Report, 2024 \(Session 6\) \(parliament.scot\)](#)

Procedure for Negative Instruments

6. 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).

7. 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.

8. 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.

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

Clerks
Net Zero, Energy and Transport Committee

Annexe – Accompanying documents

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 112A(1) of the New Roads and Street Works Act 1991 (“the Act”) provides for the Scottish Road Works Commissioner (“the Commissioner”) to keep a register to be known as the Scottish Road Works Register (“SRWR”).

Section 112A(4)(a) of the Act allows the Scottish Ministers, by regulations, to provide that the payment to the Commissioner of the prescribed fee is a condition of access to the SRWR.

Regulation 3(1) provides that, for the financial year 2024/2025 (commencing 1 April 2024) payment to the Commissioner of the prescribed fee by roads authorities and relevant undertakers is a condition of access to the SRWR as mentioned in section 112A(3) of the Act. The term “relevant undertaker” is defined in regulation 2.

Regulation 3(3) and (4) provides formulas for the calculation of the prescribed fee for roads authorities and relevant undertakers respectively for the financial year 2024/2025, commencing on 1 April 2024.

Regulation 4 revokes the Scottish Road Works Register (Prescribed Fees) Regulations 2022.

These Regulations also amend the Road Works (Qualifications of Operatives and Supervisors) (Scotland) Regulations 2017/147, applicable to undertakers, (“the 2017 Regulations”) and the Road Works (Reinstatement Quality Plans, Qualifications of Supervisors and Operatives and Miscellaneous Amendments) (Scotland) Regulations 2023/33, applicable to roads authorities, (“the 2023 Regulations”). Both the 2017 Regulations and the 2023 Regulations prescribe the qualifications required of supervisors and trained operatives executing certain types of road works.

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 8(1) of the 2017 Regulations, which sets out the approved bodies, is amended by regulation 5, which adds the names of 2 new bodies (Highfield Awarding Body for Compliance Limited, also known as Highfield Qualifications and Energy and Utility Skills Limited, also known as EUIAS) which have been approved to issue certificates of competence in respect of certain types of road works. The same amendment to regulation 10(1) of the 2023 Regulations is made by regulation 6.

A Business and Regulatory Impact Assessment has been prepared and placed in the Scottish Parliament Information Centre. Copies can be obtained from Transport Scotland, Area 2D North, Victoria Quay, Edinburgh, EH6 6QQ and online at www.legislation.gov.uk.

POLICY NOTE**THE ROAD WORKS (SCOTTISH ROAD WORKS REGISTER FEES AND MISCELLANEOUS AMENDMENT) REGULATIONS 2024****SSI 2024/23**

The above instrument was made in exercise of the powers conferred by section 61B(9) of the Roads (Scotland) Act 1984 (c. 54) (“the 1984 Act”) and sections 112A(4), 126 and 163(1) of the New Roads and Street Works Act 1991 (c. 22) (“The 1991 Act”). The instrument is subject to the negative procedure.

Summary Box

The purpose of this instrument is to make two minor amendments to existing road works legislation.

Firstly, to revoke the existing Scottish Road Works Register (Prescribed Fees) Regulations 2022 which prescribe the fee payable as a condition of access to the Scottish Road Works Register for the financial year 2023/24, and prescribe a new fee for the financial year 2024/25.

Secondly to amend the Road Works (Qualifications of Operatives and Supervisors) (Scotland) Regulations 2017 (“the 2017 Regulations”) and the Road Works (Reinstatement Quality Plans, Qualifications of Supervisors and Operatives and Miscellaneous Amendments) (Scotland) Regulations 2023 (“the 2023 Regulations”), to add two new bodies to the existing list of bodies approved to issue certificates of competence (qualifications) in respect of road works.

Policy Objectives

The first policy objective of this instrument is to prescribe the fee payable as a condition of access by roads authorities and relevant undertakers to the Scottish Road Works Register for the period from 1 April 2024 to 31 March 2025. It revokes the Scottish Road Works Register (Prescribed Fees) Regulations 2022 (S.S.I. 2022/9) which set the fees for the preceding financial year.

The Transport (Scotland) Act 2005 (“the 2005 Act”) makes statutory provision, by way of amendment to the 1991 Act, for the co-ordination of road works in Scotland and for co-operation between Scottish Roads Authorities and utility companies (known as Statutory Undertakers). The 2005 Act also provided for a single, national, Scottish Road Works Register (“the Register”).

Part 2 of the 2005 Act provides a framework for the appointment of the Scottish Road Works Commissioner and requires that the Commissioner is the keeper of this Register where roads authorities and utility companies can enter the prescribed notices required for their works in the road network. The 2005 Act also makes provision for the collection of prescribed fees as a condition of access to the Register. Fees are collected from roads authorities and utility companies.

The level of fees to be collected and the mechanism for apportioning costs to the users granted access to the Register by its keeper has been prescribed in secondary legislation with regular updates since 2008. This process remains unchanged.

The Register is an electronic database supplied by an external software provider and is kept and maintained by the Scottish Road Works Commissioner. The Register allows for the planning and coordination of road works between roads authorities and utility companies so that impacts on businesses and other road users are minimised.

The cost of running the Register can vary from year to year, and new Instruments are needed where the fees and amounts vary from the previous year. The figure for the financial year 2024/25 (£901,314) accounts for all of the estimated operational and training costs expected to be incurred in that year.

The second purpose of this Instrument is to amend the 2017 Regulations in Regulation 8(1) and the 2023 Regulations in Regulation 10(1) (on road works qualifications), to include two new approved bodies. It is the duty of specified bodies executing certain types of road works to ensure that they are supervised by a person who holds a prescribed qualification as a supervisor and that there is on site at all times at least one person who holds a prescribed qualification as a trained operative. Only listed awarding bodies may award these certificates.

The 2017 Regulations and 2023 Regulations currently specify four bodies approved to issue certificates of competence. They are: the Scottish Qualifications Authority, the City and Guilds of London Institute, Lantra Ltd and the CABWI Awarding Body. This instrument will insert “EUIAS” and “Highfield Qualifications” as new approved bodies, both organisations having sufficiently demonstrated the ability to act in that capacity.

Only those bodies approved by the Scottish Ministers may issue certificates of competence. This instrument is necessary as, in terms of section 126(4) of the 1991 Act, and section 61(B)(9) of the 1984 Act respectively, only the Scottish Ministers may approve bodies (or withdraw their approval) by way of Regulations.

EU Alignment Consideration

This instrument is not relevant to the Scottish Government’s policy to maintain alignment with the EU.

Consultation

To comply with the requirements of Section 163A of the 1991 Act, the Scottish Government has carried out an eight week public consultation in relation to the change in fees and training bodies. The underlying fees framework had been discussed and agreed through the road works community body, the Roads Authorities and Utilities Committee (Scotland) (RAUC(S)) before forming part of the first statutory process. RAUC(S) have not put forward any alternate model and continue to support the status quo. A full list of respondents to the consultation, many of whom agreed to the release of their response, is published on the Scottish Government website, and is contained within the associated BRIA. Responses came from predominately roads authority organisations, such as South Lanarkshire

Council, Aberdeenshire Council and Highland Council, but also utility firms (Such as SSE Energy Solutions, a major power firm and a telecoms provider) and the office of the Scottish Road Works Commissioner. All were broadly in favour of both policy proposals, including confirming they had 'no adverse comments/objections' to having two additional awarding bodies in Scotland for road works qualifications. The cost splitting mechanism is based on number of works done, with a factor applying to roads authority works based on network length. Two responses were concerned that the splitting mechanism resulted in utility firms paying 65% of costs (compared to 35% by roads authorities), as was the split of works done when the mechanism was first agreed. As utility works now make up 75% of works (compared to 25% by roads authorities), this is as expected.

In addition to the formal consultation, policy officials have met with RAUC(S) directly in September and June 2023 where both fees for the financial year 2024/25 and the potential for two new training bodies in Scotland was discussed. On training bodies specifically, officials also met with the UK wide road works Training and Accreditation Group ("TAG") in December 2023 and with the Scottish Qualification Authority, in its capacity as the keeper of the UK wide register of qualified operatives and supervisors in August 2023. Each of these groups had no issues with the suitability of the two new proposed awarding bodies.

Impact Assessments

There is no aspect of the proposals which have a differential or discriminatory impact on equality groups, islands, or individuals. Assessment of the Fairer Scotland Duty, Equality Impact Assessment, Islands Communities Impact Assessment, Data Protection Impact Assessment and Child Rights and Wellbeing Impact Assessment found the proposals to be out of scope in these areas.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of the fees policy will be to increase the costs borne by users of the Register, however the impact of this on business is considered to be proportionate to ensure that the anticipated cost of operating the register are met. The costs involved in setting up two new awarding bodies for Scotland will be borne by those two specific organisations directly. For those seeking those qualifications, the effect of having a broader range of providers to choose from will be cost neutral, and potentially reduce prices due to the natural competition impact of having a broader choice of providers.

Scottish Government

Transport Scotland - Transport Strategy and Analysis

January 2024

Impact assessments

- [Business and Regulatory Impact Assessment \(BRIA\) \(legislation.gov.uk\)](https://legislation.gov.uk)