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 This instrument also amends older road works instruments to correct references to out of date documents, and to products no longer in use.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 'Reinstalment 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

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

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