POLICY NOTE

THE SCOTTISH ROAD WORKS COMMISSIONER (IMPOSITION OF PENALTIES) AMENDMENT REGULATIONS 2021

SSI 2021/431

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 by section 25 of the Transport (Scotland) Act 2005 (asp 12). This instrument is subject to the negative resolution procedure.

Purpose of the instrument. ***The purpose of this instrument is to increase the maximum level of penalty available to the Scottish Road Works Commissioner from £50,000 to £100,000. The instrument will also increase the maximum penalty which can be imposed by a sheriff when disposing of an appeal against a penalty imposed by the Scottish Road Works Commissioner from £50,000 to £100,000.***

Policy Objectives

The policy objective of this instrument is to prescribe the maximum level of penalty outlined in Section 119A of the 1991 Act. It achieves this by amending the 2007 instrument, The Scottish Road Works Commissioner (Imposition of Penalties) Regulations 2007.

The Transport (Scotland) Act 2005 ("the 2005 Act") makes statutory provision, by way of amendment to the 1991 Act, for the imposition of penalties by the Scottish Road Works Commissioner for failings under Section 118 and 119 of the 1991 Act. These are the general duties of co-ordinating works (for road works authorities) and co-operation (for undertakers) respectively. The existing 2007 instrument limits the maximum penalty to £50,000.

The 2007 instrument also makes provision as to the payment of such penalties, notification and enforcement of penalties and appeals against the imposition of penalties. These aspects will not be amended

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 an increase in the maximum level of penalty available to the Commissioner. "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

Impact Assessments
There is no aspect of the proposal which has a differential or discriminatory impact on equality groups, islands, the environment or child rights and wellbeing.

Financial Effects

A Business and Regulatory Impact Assessment (BRIA) has been completed and is attached. The impact of this policy will be to raise the level of penalty to a value which again provides a deterrent, as was the case with the original £50,000 penalty prescribed in 2007. As with all penalties, the financial impact can be avoided entirely by meeting the duties placed on the organisation by Section 118 and 119 of the 1991 Act.

Scottish Government
Transport Strategy and Analysis

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