

# Net Zero, Energy and Transport Committee

14th Meeting, 2021 (session 6), Tuesday, 14  
December 2021

## Subordinate Legislation - The Scottish Road Works Commissioner (Imposition of Penalties) (Amendment) Regulations 2022 (SSI 2021/431)

Note by the Clerk

### Overview of instrument

1. The following Scottish Statutory Instrument (SSI), subject to negative procedure, is being considered at today's meeting:
  - [The Scottish Road Works Commissioner \(Imposition of Penalties\) \(Amendment\) Regulations 2022 \(SSI 2021/431\)](#)
2. The instrument was laid before the Parliament on 25 November 2021 and would come into force on 1 February 2022.

### Purpose of the instrument

3. Section 118 of the New Roads and Street Works Act 1991 places a general duty on a road works authority to coordinate road works. Section 119 of the 1991 Act places a general duty on undertakers (of road works) to co-operate with the road works authority and other undertakers.
4. The purpose of this instrument is to increase the maximum level of penalty available to the Scottish Road Works Commissioner for failure to comply with these duties from £50,000 to £100,000. The instrument also increases 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.
5. The Transport (Scotland) Act 2005 made statutory provision for the imposition of penalties by the Scottish Road Works Commissioner for failings under sections 118 and 119 of the 1991 Act. When first introduced, the penalty was set as 'not exceeding' £50,000. According to the Policy Note, this level of fine was intended to be large enough to pose a genuine deterrent to unacceptable behaviour, but not so large as to be disproportionate or excessive for duties under review.

6. The Business and Regulatory Impact Assessment for the instrument states that the intended effect of the instrument is to increase the upper limit to a value more appropriate for 2021 and beyond.
7. The Policy Note provides further detail on the instrument and is attached at **Annexe A**.

## Delegated Powers and Law Reform Committee consideration

8. The Delegated Powers and Law Reform Committee considered this instrument at [its meeting on 7 December 2021](#) and determined that it did not need to draw the attention of Parliament to the instrument on any grounds within its remit. [Read the official report for the meeting on 7 December 2021.](#)

## Committee Consideration

9. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting is 17 January 2021.

## Procedure

9. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. 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).
10. 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.
11. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
12. If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book.) Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.
13. Each negative instrument appears on the Net Zero, Energy and Transport Committee’s 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 the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not always possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.

14. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

## Annexe A: Policy Note

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.

### **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](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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