

Delegated Powers and Law Reform Committee

7th Meeting, 2023 (Session 6)

Tuesday, 28 February 2023

Instrument Responses

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.