

## **EXECUTIVE NOTE**

### **THE ROAD WORKS (FIXED PENALTY) (SCOTLAND) REGULATIONS 2008 SSI/2008/244**

1. This instrument has been made in exercise of the powers conferred on the Scottish Ministers by sections 108(5), 156(1) and (2) of, and paragraphs 2, 4(1), 5(2), 12(2), 13(2) and (3) of Schedule 6B to, the New Roads and Street Works Act 1991. The instrument is subject to the negative resolution procedure.

#### **Policy Objectives**

2. The Transport (Scotland) Act 2005 aims to improve the co-ordination, planning and quality of road works carried out in Scotland. Part 2 of the Act provides a statutory framework for improvements to road works.

3. Fixed penalty notices (FPNs) may, from 1<sup>st</sup> October 2008, be issued by road works authorities for certain noticing offences listed in Schedule 6A to the 1991 Act. The introduction of these penalties shall improve the quality of information entered into the Scottish Road Works Register (a co-ordination tool) and improve the co-ordination and planning of road works and ultimately reduce the congestion on roads attributable to road works. These noticing offences include a failure to provide advance, starting date, emergency or reinstatement details within any notice requirement.

4. This instrument contains provisions to prescribe the time after which a FPN may not be given, modify the period for payment of a penalty, the level of penalty including discounted amount, the form of the FPN and notice withdrawing a FPN, the methods by which penalties may be paid and the manner of service of a FPN and notice withdrawing an FPN.

#### **Consultation**

5. The Executive launched the consultation 'The Regulation of Utility Company Road Works' in October 2003. The consultation aimed to establish the extent and type of problems, proposals for change and how the co-ordination and quality of road works should be measured and improved.

6. Subsequently, the Executive set-up a steering group comprising of members of the Scottish Executive, Co-Chairs of Roads Authorities and Utilities Committee (Scotland) (RAUC(S)), the Chair of the Scottish Road Works Register Management Group and representatives from the Society of Chief Officers of Transportation in Scotland (SCOTS) and the National Joint Utility Group (NJUG).

7. A working group was formed in March 2005 in association with RAUC(S) to inform this instrument and associated Code of Practice. This group had equal representation from both road works authorities and undertakers. Recommendations from this group were developed in consultation with key stakeholders and scrutinised by the steering group

8. The Executive consulted on the draft instrument during November 2006 and received 20 responses from a wide range of stakeholders.

### **Financial Effects**

9. The financial impacts of this instrument are outlined in the accompanying regulatory impact assessment.

Iain Gardiner  
Scottish Government Transport Directorate  
June 2008

# **The Road Works (Fixed Penalty) (Scotland) Regulations 2008 - Regulatory Impact Assessment**

## **Objectives**

1. The objectives of the Road Works (Fixed Penalty) (Scotland) Regulations 2008 ("the FPN Regulations") are to:

- ensure that local authorities receive better quality information to provide for the better co-ordination of road works; and
- encourage greater compliance with the various duties and obligations under the New Roads and Street Works Act 1991 (NRSWA), especially with respect to notices.

## **Background**

2. The Scottish Ministers propose to introduce a fixed penalty notice ("FPN") scheme in Scotland through these Regulations for a range of statutory duties and obligations relating to notices for road works. The noticing system, established under NRSWA, requires utilities to give notice of proposed road works to the local road works authority. These Regulations form part of the Transport (Scotland) Act 2005 (TSA) powers to improve coordination and ensure that road works are carried out in a timely and efficient manner.

## **Rationale for government intervention**

3. The noticing system is an essential tool for the better management of road works. The Road Works (Registers, Notices, Directions and Designations) (Scotland) Regulations 2008 will improve both the current noticing arrangements and specification of data. The Scottish Ministers are making these Regulations, to enforce the noticing system, because:

- information provided to road works authorities by undertakers in various notices under NRSWA is crucial for the authorities' exercise of their co-ordination duty;
- many notices currently do not contain accurate information and are not provided within the prescribed timeframes, making it difficult for authorities to fulfil their duties, particularly that to coordinate works in the road;
- under NRSWA, offences related to the noticing system could only be prosecuted through the Courts. However, there has been a very low prosecution rate as the costs for the Authority in taking a prosecution to Court are high compared to the fines and level of costs awarded;
- the Government believes that a failure to improve the process of enforcement vis-à-vis notices could undermine the TSA road works legislation.

4. The Government believe that do-nothing is not an option. The strengthening of powers for road works authorities to enforce the noticing system will reduce the impact of road works on road users, and congestion. It will also enhance the ability of road works authorities to fulfil their network management duty.

### **Public consultation**

5. A full public consultation took place in late 2006 and 20 responses were received from a wide range of stakeholders.

### **Options**

6. The options were to do nothing or to improve the enforcement of the obligations set out in the NRSWA. The FPN Regulations set out the scheme, the principles of which are:-

- it is up to the road works authority to decide whether an offence has been committed and whether the giving of an FPN is the most appropriate action;
- FPNs are not intended to provide surplus revenue. The road works authority should therefore not plan for any net proceeds emerging from this scheme.
- it is the responsibility of the undertaker to manage the process of complying with the statutory duties and obligations under the NRSWA.
- an FPN will be given to the undertaker promoting the works and not to any contractors who carry out the works.
- the FPN Regulations provide a penalty of £120 with a discounted amount of £80.
- if the undertaker pays either the full penalty or the discounted amount, as appropriate, then no further proceedings can be taken against the undertaker for the offence.
- if the undertaker does not pay the penalty within the 36 days, as extended where appropriate, the road works authority may bring forward proceedings through the Courts for the original offence.
- once an FPN has been given no proceedings for the offence may be commenced against the undertaker until the end of the period for payment of the penalty.

### **Race Equality Impact**

7. These proposals do not have any race equality impacts.

## **Environmental impact**

8. The introduction of the FPN Regulations are intended to contribute to the reduction of disruption on roads by better co-ordination of road excavations and a reduction in duration of works. By reducing congestion there will be an associated improvement in the levels of air quality, as vehicle emissions, caused by stationary vehicles, will be reduced.

## **Disability Impact Assessment**

9. These proposals do not have any disability impacts.

## **Benefits**

### **Social and environmental benefits**

10. Any activity carried out in the road has the potential to cause disruption depending how long it lasts, its location, its scale and how it is carried out. The benefits of being able to better control these activities are:

- reduced occupation of the road helps reduce congestion and maximises the use of the existing network, improving reliability and making journeys more predictable as well as making them faster and safer. This makes journeys easier to plan and reduces the amount of wasted or unproductive time;
- as congestion is reduced, pollution is also reduced, with benefits for air quality and other aspects of the environment;
- business can operate more efficiently through the quicker and more reliable delivery of goods, service of and access to customers;
- people are able to reach their destinations more easily, saving time and effort;
- public transport can operate more reliably and provide a better service, potentially further relieving congestion on the road by attracting motorists onto public transport.

### **Economic benefits**

11. The FPN Regulations are a key element in the Government's strategy to tackle congestion through better use of the existing network, especially those elements that are to be delivered by the TSA.

12. The key direct benefit of the FPN Regulations is the reduction in costs to road works authorities of enforcing the noticing system. Under NRSWA the offences detailed in these Regulations could only have been prosecuted through the Courts.

## **Costs**

13. Undertakers will only incur FPN charges if they commit fixed penalty offences. These costs are, therefore, avoidable.

14. It is not possible to predict how many FPNs will be given. There will be variations amongst differing authorities.

15. There will of course be set up and running costs attributable to roads authorities. However, there is provisions in the Regulations to allow authorities to retain as much of the money received by way of penalties as is sufficient to meet the reasonable costs of operating the scheme.

## **Small Firms Impact Test**

16. The impact on small businesses should be minimal, as the introduction of the FPN scheme will predominantly affect road works authorities and utilities i.e. water, gas, electricity and telecommunications.

17. The FPN system means that the penalty is given to the undertaker promoting the works as they have the duty to comply with NRSWA. This scheme may therefore have consequential implications for contractors if the undertakers pass on the costs of the FPNs paid.

18. Representatives of small businesses were consulted as part of public consultation process.

## **Competition Assessment**

19. It is not expected that the proposed FPN scheme will any impact on competition. All undertakers are subject to the same regime.

20. It is also possible that some businesses may incur greater costs in setting up new systems to improve the management of their works. However, it is unlikely that such costs will be sufficient to have implications for competition.

## **Enforcement, Sanctions and Monitoring**

21. The responsibility for the FPN scheme resides with the road works authorities. They retain the power to take an alleged offender to Court instead of giving an FPN.

## **Implementation and Delivery Plan**

22. The Scottish Ministers are making the Road Works (Fixed Penalty) (Scotland) Regulations 2008 to provide improved enforcement of the obligations and duties relating the noticing system arising from the NRSWA.

## **Summary and recommendation**

23. The Government is committed to reducing congestion across the road network, and to realising the economic, social and environmental benefits that this brings.

24. Under NRSWA, offences related to the noticing system can only be prosecuted through the Courts. However, there is a relatively low prosecution rate because the costs for the road works authority in taking a prosecution to Court are high compared to the fines and level of costs awarded. The FPN Regulations provide an alternative that is less costly for both sides and a more constructive way of dealing with these offences, however prosecution through the Courts is still a possibility.

25. The Government also believes that the Regulations could contribute to the delivery of benefits through reduced disruption for all road users and reduced negative environmental effects of utility works.

## **Declaration**

26. I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs.

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