

Business and Regulatory Impact Assessment

Title of Proposal

The Scottish Road Works Register (Prescribed Fees) Regulations 2021

Purpose and intended effect

- **Background**

The New Roads and Street Works Act 1991 (“the 1991 Act”) enables the Scottish Ministers to require by Regulations, that a payment is made to the Scottish Road Works Commissioner for access to the Scottish Road Works Register (“the Register”).

These regulations set the levels of prescribed fees and amounts that can be levied as a charge to those accessing the register. The Register is a national electronic database, used by both road works authorities and utility companies to assist them in the forward planning and co-ordination of works on Scottish roads. This single national database allows them to fulfil their statutory obligation to co-operate and to co-ordinate works under the 1991 Act. Road authorities and utility companies (often referred to as “statutory undertakers” in the legislation) have a duty to submit prescribed information relating to road works in the form of notices placed onto this central register.

- **Objective**

These Regulations will change the overall fee figure used in the formula to calculate the proportion of the cost of providing the Register to be paid by individual roads authorities and statutory undertakers.

The fee is calculated using a series of formulas that share the cost of running the register annually between the roads authorities (who between them bear 35% of the cost) and the undertakers (who make up the remaining 65%).

The current Regulations “The Scottish Road Works Register (Prescribed Fees) Regulations 2020” set a prescribed fee of £911,000 based on the projected cost of operating the register for the year 2020-2021, following the successful retendering and award of the Scottish Road Works Register provision contract.

The level of prescribed fee, based on estimated costs of running the Register for the year 2021/22 is to be set at £915,000.

- **Rationale for Government intervention**

The fees cover the full cost of operating and maintaining the Register. The formula used was developed and agreed by the user community itself, through the Roads Authorities and Utilities Committee (Scotland) (“RAUC(S”). The fee is calculated based on activity in the previous year taking account of anticipated costs of running and providing the service of the Register.

The coordination of road works through the use of the Register helps meet the following strategic objectives within the National Performance Framework:

- We live in well-designed, sustainable places where we are able to access the amenities and services we need;
- We value and enjoy our built and natural environment and protect it and enhance it for future generations;
- Our public services are high quality, continually improving, efficient and responsive to local people's needs; and
- We have strong, resilient and supportive communities where people take responsibility for their own actions and how they affect others

Consultation

- **Within Government**

Transport Scotland, in its role as trunk road authority in Scotland, was consulted as part of the consultation process. In addition, the Scottish Road Works Commissioner (SRWC), an independent public body, was consulted regarding the cost of operating the register.

- **Public Consultation**

The New Roads and Street Works Act 1991 requires the Scottish Ministers to consult representatives of statutory undertakers, road works authorities and others as appropriate. We undertook a short consultation on the proposed changes. This showed support for the change from a small sample size of 12 responses. Responses were generally in line with previous consultations on the issue.

Responses were received from a number of organisations, predominately roads authorities and roads authority organisations, as well as two individuals.

- **Business**

The parties directly affected by the change (both road works authorities and utility companies) were informed directly through the stakeholder group "RAUC(S)" when the consultation launched.

Options

The following options are appropriate for the proposed regulations:

Option 1 – Do nothing i.e. allow the current Regulations to elapse with no new regulation in place.

Option 2 – Make Regulations to prescribe the new amount required to operate the register in 2021-22.

Sectors and groups affected

Option 1 – road works authorities and utility companies

Option 2 – road works authorities and utility companies

Benefits

Option 1 - Option one would effectively be a detrimental option as the register contract costs could not be met, the provision of the register would be put at risk. The register is key to co-ordination of road works in Scotland, and the culture of collaborative working which currently exists.

Option 2 – Setting the fee at the correct level will ensure that the full costs of operating the register will be covered. It also allows for any excess income paid by Register users to be offset against the level of fee income that has to be recovered in future years.

Costs

The level of fees paid by users depends on a number of factors. The formula developed with the road works community shares the estimated full cost (£915,000) of operating the register across utility company and road authority users, taking cognisance of the different operational needs of both organisation types.

The fees paid by users are currently linked to the overall income required to operate the register. In the case of utility companies the fee is calculated based on the number of notices placed onto the register; and in the case of road works authorities, it is a proportion of the total fee income required, having taken account of fixed amounts (“prescribed amounts”) that each authority is required to pay.

Option 1 – The 2020 instrument is limited to that financial year, so there would be no legal mechanism to cover the running costs of the register in 2021/22. The register contract would be in default, the register would cease to operate, and organisations would be unable to undertake any work in Scotland’s roads. The costs associated would be the entire cost of being unable to repair or maintain our utility networks and roads.

Option 2 – Any additional cost in running the Register will be allocated, using the current agreed methodology, between Road Works Authorities and Undertakers

Scottish Firms Impact Test

This regulation affects exclusively utility firms, both privately and publicly funded, the Scottish Road Works Commissioner, and roads authorities. Face to face discussions took place agreeing the original figure for the overall Fee with the Scottish Road Works Commissioner. The road works community, including representatives of firms directly affected and their umbrella organisations, were responsible for developing the matrix included within the regulation.

Competition Assessment

The answers to the Competition and Markets Authority Filter questions in the original Regulations indicated that this proposal would not directly or indirectly limit the range of suppliers or the ability of suppliers to compete, or reduce suppliers incentives to compete vigorously. The proposed Regulations will not change this.

Test run of business forms

No new business forms will be created.

Digital Impact Test

The measure has no impact on digital technologies, markets and has no applicability in either an offline or online context.

Legal Aid Impact Test

The Scottish Legal Aid Board did not anticipate any impact on the Legal Aid Fund from the original Regulations, or any of the subsequent amending regulations.

Enforcement, sanctions and monitoring

The Scottish Road Works Commissioner is wholly responsible for the collection of fees set under these Regulations.

How will the proposal be implemented and in what timescale?

The Regulations will come into force on 1 April 2021. It has been customary to introduce these regulations with a coming in to force date of 1 April, allowing for a 60 day timescale in which to make payment.

- **Post-implementation review**
RAUC(S) will continue to consider the matrix for fees and amounts required in the future.

Summary and recommendation

The level of the proposed fees within the 2021 Regulations will secure the operation of the Scottish Road Works Register for 2021/2022 without any adverse impact to business.

It is recommended that the level of prescribed fees are set based on estimated costs of running the Register, being set at £915,000 for 2021/2022.

• **Summary costs and benefits table**

Option	Total benefit per annum: - economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative
1	No funds will be collected by the Commissioner, which may result in some of the required functionality for the register from new legislation/codes of practice being unable to be developed. Potentially this could leave the SRWC unable to pay the software provider rendering him in breach of the contract. This could prevent organisations from fulfilling their statutory obligations in the short term until a paper based system is implemented in the longer term.	No change would prevent the SRWR from being operated.

2	The cost of running the register will be met (estimated to be £915,000)	Roads Authority and Utility Company costs will increase slightly from the previous year
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Declaration and publication

- Sign-off for Final BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

Signed: Michael Matheson

Date: 27th January 2021

**Michael Matheson
Cabinet Secretary For Transport Infrastructure and Connectivity**

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