

19 November 2007

Dear Sir/Madam

TRANSPORT (SCOTLAND) ACT 2005: CONSULTATION ON THE SCOTTISH ROAD WORKS REGISTER (PRESCRIBED FEES AND AMOUNTS) REGULATIONS 2008

Since the Transport (Scotland) Act 2005 came into force in August 2005, we have been working closely with road works authorities and statutory undertakers to develop the Regulations (secondary legislation) and Codes of Practice that will give effect to the road works provisions of the 2005 Act. These are aimed at improving the planning, co-ordination and quality of road works throughout Scotland.

We now wish to launch a consultation on a revision of the Scottish Road Works Register (Prescribed Fees and Amounts) Regulations which deals with the road works regulations which provide for the prescribed fees and amounts which are a condition of access to the Scottish Road Works Register.

This is a follow-up consultation to that of November 2006 entitled Transport (Scotland) Act 2005: Consultation on Road Works Regulations and Code of Practice - Part 2: Penalties, Disputes & Appeals, Register Fees & Amounts and Qualifications
<http://www.scotland.gov.uk/Publications/2006/11/06113102/0>

The consultation is web based and you may respond electronically as instructed on the website if you wish. However, if you have questions about the consultation or would like to receive a paper copy of the documents, please contact Raymond Elliot as detailed above. Please note that the closing date for responses is 28 December 2007, and we look forward to receiving your views.

Many thanks.

Yours faithfully

ANGUS MACINNES

Head of Roads Policy, Road Safety and Traffic Management

SCOTTISH STATUTORY INSTRUMENTS

2008 No.

ROADS AND BRIDGES

The Scottish Road Works Register (Prescribed Fees and Amounts) Regulations 2008

<i>Made</i>	- - - -	2008
<i>Laid before the Scottish Parliament</i>		2008
<i>Coming into force</i>	- -	[2008]

The Scottish Ministers make the following Regulations in exercise of the powers conferred by sections 112A(4) and 163(1) of the New Roads and Street Works Act 1991(a) and all other powers enabling them to do so.

In accordance with section 163A of that Act(b) they have consulted with such persons and road works authorities as they think appropriate.

Citation and commencement

1. These Regulations may be cited as the Scottish Road Works Register (Prescribed Fees and Amounts) Regulations 2008 and come into force on [2008].

Interpretation

2. In these Regulations–

“the Act” means the New Roads and Street Works Act 1991;

“financial year” means the period of 12 months commencing on 1st April in each calendar year;

“local authority” means a council constituted under section 2 of the Local Government etc. (Scotland) Act 1994(c);

“relevant apparatus” means apparatus(d) in a road, other than for roads purposes, as at 31st December in the calendar year last ending before the financial year to which the prescribed amount relates;

“relevant undertaker” means an undertaker who has entered a notice in the voluntary register run by local authorities prior to the establishment of the SRWR(e) in the 3 year period ending on 31st December 2007; and

“undertaker” has the same meaning as in section 107(4) of the Act but excludes those persons granted permission under section 109 of the Act to execute road works.

(a) 1991 c.22. Section 112A was inserted by section 19 of the Transport (Scotland) Act 2005 (asp 12) (“the 2005 Act”).

(b) Section 163A was inserted by section 39 of the 2005 Act.

(c) 1994 c.39.

(d) See section 164(1) of the Act for the definition of “apparatus” (which is expanded by section 148(2) of the Act).

(e) The Scottish Road Works Register created by section 112A(1) of the Act.

Prescribed persons and amounts

3.—(1) For the purposes of section 112A(4)(b) of the Act, prescribed(a) persons are as follows—

- (a) roads authorities(b); and
- (b) undertakers.

(2) The roads authorities specified in column 1 of Schedule 1 shall each pay to the Commissioner(c), for every financial year beginning with that commencing on 1st April 2008, the prescribed amount shown in the corresponding entry in column 2 of that Schedule.

(3) An undertaker shall pay to the Commissioner, for every financial year beginning with that commencing on 1st April 2008, the prescribed amount in accordance with the following sub-paragraphs—

- (a) where an undertaker has relevant apparatus in at least 1 but fewer than 6 local authority areas in Scotland, the prescribed amount is £2,500;
- (b) where an undertaker has relevant apparatus in between 6 and 10 local authority areas in Scotland, the prescribed amount is £5,000; and
- (c) where an undertaker has relevant apparatus in more than 10 local authority areas in Scotland, the prescribed amount is £10,000.

(4) Payments due to the Commissioner under this regulation shall be made within 90 days of receipt of the invoice from the Commissioner.

Prescribed fees

4.—(1) For the financial year commencing on 1st April 2008, payment to the Commissioner of the prescribed fee, calculated in accordance with paragraphs (3) and (4), by roads authorities and relevant undertakers is a condition of access to the SRWR as mentioned in section 112A(3) of the Act.

(2) Payments due to the Commissioner under this regulation shall be made within 90 days of receipt of the invoice from the Commissioner.

(3) For each roads authority, the prescribed fee for the purposes of section 112A(4)(a) of the Act shall be calculated in accordance with the formula—

$$R \times (\text{£}[\text{estimated cost of running the SRWR} = \text{tbc}] - \text{£}A)$$

where—

R is the figure shown in column 2 of Schedule 2 for the roads authority specified in column 1 of that Schedule to which the calculation relates; and

£A is the total amount payable to the Commissioner by way of prescribed amounts under regulation 3 for the financial year commencing on 1st April 2008.

(4) For each relevant undertaker, the prescribed fee for the purposes of section 112A(4)(a) of the Act shall be calculated in accordance with the formula—

$$\frac{N}{TN} \times (\text{£}[\text{estimated cost of running the SRWR} = \text{tbc}] - \text{£}A) \times 0.75$$

where—

N is the number of notices entered in the voluntary register run by local authorities prior to the establishment of the SRWR by the relevant undertaker to which the calculation relates over the 3 year period ending on 31st December 2007;

(a) See section 163(1) of the Act for the definition of “prescribed”.

(b) Section 145(1) of the Act defines “roads authority” as having the same meaning as in section 151 of the Roads (Scotland) Act 1984 (c.54).

(c) The Scottish Road Works Commissioner created by section 16(1) of the 2005 Act and defined in section 112A(1) of the Act.

TN is the total number of notices entered in the voluntary register run by local authorities prior to the establishment of the SRWR by all undertakers over that same 3 year period; and

£A is the total amount payable to the Commissioner by way of prescribed amounts under regulation 3 for the financial year commencing on 1st April 2008.

St Andrew's House,
Edinburgh

2008

Authorised to sign by the Scottish Ministers

SCHEDULE 1

Regulation 3(2)

PRESCRIBED AMOUNTS PAYABLE TO THE COMMISSIONER BY
ROADS AUTHORITIES

<i>Column 1</i> <i>Roads Authority</i>	<i>Column 2</i> <i>Prescribed amount</i>
	£
Aberdeen City	1000
Aberdeenshire	1000
Angus	1000
Argyll & Bute	1000
Clackmannanshire	500
Dumfries & Galloway	1000
Dundee City	1000
East Ayrshire	1000
East Dunbartonshire	1000
East Lothian	1000
East Renfrewshire	1000
City of Edinburgh	2000
Comhairle nan Eilean Siar	500
Falkirk	1000
Fife	2000
Glasgow City	2000
Highland	1000
Inverclyde	1000
Midlothian	1000
Moray	1000
North Ayrshire	1000
North Lanarkshire	2000
Orkney Islands	500
Perth & Kinross	1000
Renfrewshire	1000
Scottish Ministers	2000
Scottish Borders	1000
Shetland Islands	500
South Ayrshire	1000
South Lanarkshire	2000
Stirling	1000
West Dunbartonshire	1000
West Lothian	1000

SCHEDULE 2

Regulation 4(3)

FIGURE FOR ROADS AUTHORITIES IN RELATION TO FORMULA
AT REGULATION 4(3)

<i>Column 1</i> <i>Roads Authority</i>	<i>Column 2</i> <i>Figure</i>
Aberdeen City	0.015
Aberdeenshire	0.015
Angus	0.005
Argyll & Bute	0.0025
Clackmannanshire	0.0025
Dumfries & Galloway	0.005
Dundee City	0.0075
East Ayrshire	0.0075
East Dunbartonshire	0.005
East Lothian	0.005
East Renfrewshire	0.005
City of Edinburgh	0.02
Comhairle nan Eilean Siar	0.0005
Falkirk	0.005
Fife	0.01
Glasgow City	0.025
Highland	0.005
Inverclyde	0.005
Midlothian	0.005
Moray	0.0075
North Ayrshire	0.01
North Lanarkshire	0.01
Orkney Islands	0.001
Perth & Kinross	0.0075
Renfrewshire	0.0075
Scottish Ministers	0.005
Scottish Borders	0.01
Shetland Islands	0.001
South Ayrshire	0.005
South Lanarkshire	0.0075
Stirling	0.0075
West Dunbartonshire	0.0075
West Lothian	0.0125

EXPLANATORY NOTE

(This note is not part of the Regulations)

Section 112A(1) of the New Roads and Street Works Act 1991 (“the Act”) (as inserted by section 19 of the Transport (Scotland) Act 2005) provides for the Scottish Road Works Commissioner (“the Commissioner”) to keep a register to be known as the Scottish Road Works Register (“the SRWR”).

Section 112A(4) allows the Scottish Ministers, by regulations, to provide that the payment to the Commissioner of the prescribed fee is a condition of access to the SRWR and they may make other provision as to the payment to the Commissioner by such persons as are prescribed of such amounts as are prescribed. These Regulations exercise that power.

Regulation 3(1) prescribes persons for the purposes of section 112A(4)(b) as being roads authorities and undertakers.

Regulations 3(2) and (3) and Schedule 1 prescribe different amounts to be paid annually to the Commissioner by the prescribed persons.

Regulation 4(1) provides that, for the financial year commencing on 1st April 2008, payment to the Commissioner of the prescribed fee by roads authorities and relevant undertakers is a condition of access to the SRWR as mentioned in section 112A(3) of the Act.

Regulations 4(3) and (4) and Schedule 2 provide formulas for the calculation of the prescribed fee for roads authorities and relevant undertakers respectively.

Accompanying Consultation Note

The Scottish Road Works Register (Prescribed Fees and Amounts) Regulations 2008

1. This note has been prepared by the Scottish Government to assist the reader in the understanding of these draft consultation regulations. They do not form part of the regulations and have not been endorsed by the Scottish Parliament.
2. The notes should be read in conjunction with the regulations. They are not, and are not meant to be, a comprehensive description of the regulations. So where a regulation does not seem to require an explanation, none is given.
3. The following explanations focus on the substantive changes made to the November 2006 draft regulations. There will be a requirement to amend annually these regulations to take into account the changing costs of keeping the register year on year, and to review their effective working.
4. The overall policy is to replicate the current procedure for collecting fees that exists for the voluntary register known as the Scottish Road Works Register.

Past Consultation

5. The Scottish Government consulted on an earlier draft of these regulations during November 2006 and received 20 responses from a wide range of stakeholders.
6. The Scottish Government and stakeholders have since met to consider the responses and made a number of changes to the draft regulations. It is believed that extensive consultation with the road works user community during the formulation of the policy will ensure that these regulations are fit for purpose.

Amendments to the Consultation Draft (November 2006)

Citation and Commencement

7. These regulations are expected to come into force at the end of January/start of February 2008. This date is to ensure that the regulations are in force when invoices are issued to the community for period 2008/09.

Interpretation

8. The interpretation is broadly the same as the consultation draft although there are additions to define a financial year, relevant apparatus and relevant undertaker. Road managers and those who have been granted S109 permission to execute works under the New Roads and Street Works Act 1991 (NRSWA) have been exempted from the provisions of the regulations.

Prescribed Persons

9. For the purposes of these regulations the prescribed persons are roads authorities and undertakers. Roads authorities exclude road managers who are captured within the definition of road works authorities under NRSWA.

Prescribed Amounts

10. The prescribed existing allocation of amounts for roads authorities is contained within Schedule 1. The inclusion of actual amounts within the Schedule ensures transparency of process. The payment of the prescribed amount shall be required from 1 April 2008.

11. The prescribed amount payable for undertakers is based upon the number of local authority areas in which relevant undertaker has apparatus on 31 December in the previous calendar year. The change from roads works undertaken in any number of local authority areas is due to undertakers who may not have executed road works in the previous calendar year and are utilising the register for the purposes of damage and plant information requests only. It is therefore more meaningful to tie the criteria to the existence of relevant apparatus.

12. The period in which payment is to be made is 90 days from receipt of the invoice from the Commissioner. It is expected that the Commissioner will issue invoices early in the new year following commencement of the regulations.

Prescribed Fee

13. It is a requirement of the Transport (Scotland) Act 2005 to differentiate between the prescribed fee and prescribed amount. The condition of access to the register is the payment of the prescribed fee part of the invoice and is calculable in accordance with the formula which relates to either the roads authority or undertaker.

14. The prescribed fee for 2007/08 is based upon the same methodology used in previous years i.e. a 75/25 split of total contributions by undertakers and roads authorities respectively as agreed by the Roads Authorities and Utilities Committee (Scotland). In future the number of notices submitted by roads authorities will increase as the duty to enter all notices is commenced and a levelling of contributions between roads authorities and undertakers occurs.

15. For roads authorities the prescribed fee is R (*the figure contained within Schedule 2 which totals 25% of the total cost of keeping the register, the remaining 75% being met by undertakers*) multiplied by the estimated cost of keeping the register in the following financial year (*figure will appear within the final regulation but not the consultation draft*) minus £A (*the total amount payable to the Commissioner by way of prescribed amounts under regulation 3 for the financial year beginning on 1st April 2008*) to give a total amount due.

16. For undertakers the prescribed fee is N (*the number of notices entered in the voluntary register by the undertaker over the previous 3 years ending on 31 December 2007*) divided by TN (*the total number of notices entered into the register over the previous 3 years ending on 31 December 2007*) which gives an average percentage over the period to a factor multiplied by the estimated cost of keeping the register in the following financial year (*the*

figure will appear within the final regulation but not the consultation draft) minus £A (the total amount payable to the Commissioner by way of prescribed amounts under regulation 3 for the financial year beginning on 1st April 2008) multiplied by 0.75 (to ensure that the undertakers combined contributions amounts to 75% of the total cost of keeping the register) to give a total amount due.

17. The period in which payment is to be made is 90 days from receipt of the invoice from the Commissioner. It is expected that the Commissioner shall issue one invoice containing the combined total of the prescribed amount and fee early in the new year following commencement of these regulations.

Raymond Elliot
Scottish Government
29 November 2007