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# **Delegated Powers and Law Reform Committee Comataidh Cumhachdan Tiomnaichte is Ath-leasachadh Lagh**

## **Subordinate Legislation Considered by the Delegated Powers and Law Reform Committee on 28 February 2023**

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# Delegated Powers and Law Reform Committee

The remit of the Delegated Powers and Law Reform Committee is to consider and report on the following (and any additional matter added under Rule 6.1.5A)—

(a) any—

(i) subordinate legislation laid before the Parliament or requiring the consent of the Parliament under section 9 of the Public Bodies Act 2011;

(ii) [deleted]

(iii) pension or grants motion as described in Rule 8.11A.1; and, in particular, to determine whether the attention of the Parliament should be drawn to any of the matters mentioned in Rule 10.3.1;

(b) proposed powers to make subordinate legislation in particular Bills or other proposed legislation;

(c) general questions relating to powers to make subordinate legislation;

(d) whether any proposed delegated powers in particular Bills or other legislation should be expressed as a power to make subordinate legislation;

(e) any failure to lay an instrument in accordance with section 28(2), 30(2) or 31 of the 2010 Act;

(f) proposed changes to the procedure to which subordinate legislation laid before the Parliament is subject;

(g) any Scottish Law Commission Bill as defined in Rule 9.17A.1; and

(h) any draft proposal for a Scottish Law Commission Bill as defined in that Rule.

(i) any Consolidation Bill as defined in Rule 9.18.1 referred to it in accordance with Rule 9.18.3.



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# Committee Membership



**Convener**

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Scottish National Party



**Deputy Convener**

**Bill Kidd**  
Scottish National Party



**Jeremy Balfour**  
Scottish Conservative  
and Unionist Party



**Carol Mochan**  
Scottish Labour



**Oliver Mundell**  
Scottish Conservative  
and Unionist Party

# Introduction

1. At its meeting on 28 February, the Committee considered the following instrument under its remit and agreed to draw it to the attention of the relevant lead committee:
  - Road Works (Reinstatement Quality Plans, Qualifications of Supervisors and Operatives and Miscellaneous Amendments) (Scotland) Regulations 2023 (SSI 2023/33)
2. The Committee's recommendations in relation to this instrument are set out in the next section of this report.
3. The Committee also determined that, in terms of its remit, it did not need to draw the Parliament's attention to the instruments at the end of the report.

# Scrutiny of instruments under the Committee's remit: instruments drawn to the attention of the lead committee

## Road Works (Reinstatement Quality Plans, Qualifications of Supervisors and Operatives and Miscellaneous Amendments) (Scotland) Regulations 2023 (SSI 2023/33)

4. The instrument implements road works reform in various policy areas.
5. The Committee identified an error in regulation 5. The reference to regulation 7 in the definition of "type of work" should be to regulation 6.
6. The Scottish Government proposes to rectify this error by way of a correction slip.
7. The instrument amends regulation 3(2)(f) of the Road Works (Scottish Road Works Register, Notices, Directions and Designations) (Scotland) Regulations 2008 which refers to the statutory code of practice issued in 2003, entitled the Specification for the Reinstatement of Openings in Roads.
8. The instrument also amends the Road Works (Reinstatement)(Scotland) Regulations 1992 to insert a definition of the current statutory code of practice issued in 2019.
9. The Scottish Government has confirmed that the intention is that the 2008 Regulations also refer to the current version of the code issued in 2019, not the code issued in 2003.
10. Consequently, the 2008 regulations appear to refer to an obsolete code of practice.
11. A copy of the correspondence can be found in the **Annex**.
12. The lead committee for this instrument is the Net Zero, Energy and Transport Committee.

13. **The Committee draws the instrument to the attention of the Parliament under the general reporting ground for a cross-referencing error in regulation 5.**

14. **The Committee notes that the Scottish Government intends to correct this error by correction slip.**

15. **The Committee also draws the instrument to the attention of the Parliament on reporting ground (h) in that it could be clearer that regulation 3(2)(f) of the Road Works (Scottish Road Works Register, Notices, Directions and**

**Designations) (Scotland) Regulations 2008, as amended by this instrument, is intended to refer to the current version of the statutory code of practice entitled the Specification for the Reinstatement of the Openings in Roads, rather than the 2003 version.**

- 16. The Committee calls on the Scottish Government to clarify the position at a suitable legislative opportunity.**



# No points raised

## Criminal Justice Committee

Crime (International Co-operation) Act 2003 (Designation of Participating Countries) (Scotland) Order 2023 (SSI 2023/Draft)

Sexual Offences Act 2003 (Prescribed Police Stations) (Scotland) Amendment Regulations 2023 (SSI 2023/39)

## Education, Children and Young People Committee

Education (Scotland) Act 1980 (Modification) Regulations 2023 (SSI 2023/37)

## Finance and Public Administration Committee

Scottish Landfill Tax (Standard Rate and Lower Rate) Order 2023 (SSI 2023/50)

## Health, Social Care and Sport Committee

Health and Care (Staffing) (Scotland) Act 2019 Amendment Regulations 2023 (SSI 2023/Draft)

## Local Government, Housing and Planning Committee

Non-Domestic Rates (Restriction of Relief) (Scotland) Regulations 2023 (SSI 2023/28)

Non-Domestic Rate (Scotland) Order 2023 (SSI 2023/29)

Non-Domestic Rates (Levying and Miscellaneous Amendment) (Scotland) Regulations 2023 (SSI 2023/30)

Non-Domestic Rates (Transitional Relief) (Scotland) Regulations 2023 (SSI 2023/31)

Town and Country Planning (General Permitted Development and Use Classes) (Scotland) Miscellaneous Amendment Order 2023 (SSI 2023/35)

Council Tax (Exempt Dwellings) (Scotland) Amendment Order 2023 (SSI 2023/36)

## Social Justice and Social Security Committee

Council Tax Reduction and Council Tax (Discounts) (Miscellaneous Amendment) (Scotland) Regulations 2023 (SSI 2023/38)

## Scottish Parliament

Local Government Finance (Scotland) Order 2023 (SSI 2023/Draft)

# Annex

## 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.”

