

**Draft for Consultation
March 2010**



**Consultation on the draft
Amendment to the Charges for
Unreasonably Prolonged
Occupation of the Highway**



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1. Background and purpose of this consultation

- 1.1** The existing legislative framework for works by undertakers in the highway is set out in the New Roads and Street Works Act 1991 (NRSWA), which, along with the associated Regulations, sets the broad powers and responsibilities which undertakers and local authorities have in relation to undertakers' works. There are now some 200 utility companies, who, as statutory undertakers, have the right to dig up the road, a significant increase on the numbers in 1991. In addition, there is a gas mains replacement programme and water companies have targets to reduce leakage from pipes. These have added to the number of major works that need to be carried out. Part 4 of the Traffic Management Act 2004 provides the basis for better conditions for all road users through the proactive management of the national and local road networks.
- 1.2** This consultation deals with a proposed amendment of the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009 (the 2009 Regulations) which provide for the imposition of charges for unreasonably prolonged occupation of the highway, under section 74 of NRSWA.
- 1.3** Street works have been a devolved matter in Scotland and Wales since 1999.
- 1.4** This consultation is about proposed higher charges for works that overrun on traffic-sensitive streets. To be designated as traffic-sensitive, a street has to meet the criteria set in The Street Works (Registers, Notices, Directions, and Designations) (England) Regulations 2007 No. 1951 (SI 2007/1951)
- 1.5** This consultation is also looking for information on the number of highway authorities that are operating an overrun charges scheme, and if any others intend to impose charges in the future. This information will help refine the information used to create the Impact Assessment for the proposed new Regulations.
- 1.6** This consultation consists of:
Draft Regulations

Consultation Impact Assessment

Draft chapter for the Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters.

- 1.7** The above draft documents would apply only to England.

Consultation Proposals

- 1.8** The consultation paper asks a number of specific questions and seeks further information on the benefits and costs of implementing these changes. It would be helpful if the pro-forma at Annex A could be used in providing responses, which is available from the Department for Transport's website.
- 1.9** Comments are welcomed on other aspects of the proposed amendment to the 2009 Regulations.

2. How to Respond

- 2.1** The consultation period began on 2nd March 2010 and will run for 12 weeks.
- 2.2** If you would like printed copies or an alternate version of the consultation document (e.g. Braille, audio cd etc), please contact Beth Godden at the address below.
- 2.3** Annex A contains a pro-forma response form. Please send consultation responses by 25th May 2010:

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- 2.4** Please state whether you are responding as an individual or on behalf of an organisation. If you are responding on behalf of a larger organisation or interest group, please indicate who your organisation represents, and where applicable, how the views of members were assembled.
- 2.5** A full list of those to whom this consultation document has been supplied can be found at Annex F. It includes:
 - Street authorities;
 - Utility companies; and
 - Other interested parties.
- 2.6** We may need to share your response with colleagues in the Department for Transport. A summary of the responses to this consultation will be published on the Department's web site: www.dft.gov.uk after the consultation period has closed. Paper copies will be available on request.
- 2.7** Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom

of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

- 2.8** If you want information that you provide to be treated as confidential please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
- 2.9** In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 2.10** The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.
- 2.11** The Impact Assessment can be found at Annex D. When responding to the consultation, please comment on the analysis of costs and benefits, giving supporting evidence wherever possible.
- 2.12** The consultation is being conducted in line with the Code of Practice on Consultation. The criteria are listed in Annex E, and a full version of the Code of Practice on Consultation is available on the Better Regulation Executive web-site at:
- 2.13** If you consider that this consultation does not comply with the criteria or have comments about the consultation process please contact:

<http://www.berr.gov.uk/files/file47158.pdf>

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3. The proposed changes to overrun charges

- 3.1** Ministers are concerned that the current overrun charges do not fully reflect the impact of works on traffic-sensitive streets. By their nature such streets act as key distributors on local networks. The criteria for designation are set in The Street Works (Registers, Notices, Directions, and Designations) (England) Regulations 2007 (SI 2007/ 1951) and take account of traffic flow, and traffic mix (eg bus routes or proportion of heavy commercial vehicles), as well as a number of other factors.
- 3.2** The 2009 Regulations do not impose a higher maximum penalty for overruns on designated traffic-sensitive streets, despite the fact that the impact of disruption or congestion on such streets is significantly higher than that on streets which have not been designated traffic-sensitive.
- 3.3** Therefore Ministers are proposing higher maximum overrun charges for any works on traffic-sensitive streets that last longer than agreed. The proposed new rates following the amendment are set out in Table 4.1, alongside the overrun charges for streets that are not designated traffic-sensitive.
- 3.4** As the impact of works on traffic-sensitive streets is the same, whatever category of works are taking place, we are proposing a single daily maximum rate of overrun charges on traffic-sensitive streets. It has been suggested that overruns for immediate works should have a different or lower overrun charge, as it is difficult for undertakers in their first notice to accurately estimate how long works will take, as the extent of works needed is unknown. However, the impact of immediate works on road users is the same.
- 3.5** As these would be significant increases, the Department expects that the full charge for overrunning works on traffic-sensitive streets would only be levied where the overrun results in significant disruption to road users. We propose to revise the relevant chapter of the Co-ordination Code of Practice to strengthen the need to use overrun charges to drive the right behaviours by undertakers that reduce the impact on road users.

Table 3.1 Maximum overrun charges

£	Road category* 0 or 1	Road category 2	Road category 3 or 4

Traffic-sensitive streets			
All work categories	25,000	8,000	1,000
Non traffic-sensitive streets			
**Major or standard works	2,500	2,000	250
**Minor or immediate works	500	500	100
<p>* Road category measures how busy a street is, based on commercial vehicle numbers it is designed to serve. Category 0 are the busiest and 4 the least busy. For the purposes of these regulations, the definition of Category 0 roads shall be taken to mean roads carrying over 30 million standard axles, with no upper limit.</p> <p>** Works Categories</p> <p>Major works are works with a duration of 11 days or more; or generally identified in advance in an organisation's annual operating programme; or works which require a temporary traffic order (e.g. to shut the street) under the Road Traffic Regulation Act 1984.</p> <p>Standard works are between 4 and 10 days duration.</p> <p>Minor works are works with duration of three days or less.</p> <p>Immediate works are emergency works (e.g. to deal with gas leaks) and urgent works (e.g. restoring an electricity supply where this has been severed).</p>			

3.6 These higher maximum charges are not intended to generate additional revenue for highway authorities. They are intended to be a stronger tool to encourage the right behaviour and to help minimise disruption on key routes and help authorities fulfil their network management duty. Therefore in exercising the discretion available to them, the Department would expect authorities to examine the particular circumstances of each case. This might include taking account of the actual impact of the works on traffic flow.

Q1: Do you consider that the proposed level of overrun charges correctly reflects the impact that works can have on road users?

If not what do you consider an appropriate level, and what evidence do you have to support an alternative level of charges that reflects the impact on road users?

Q2: Do you agree that on traffic-sensitive streets, the impact of works on traffic flow is the same whatever category of works is taking place?

If not why do you think the impact varies by works category?

Q3: For immediate works, do you consider an alternative overrun charge for immediate works on traffic-sensitive streets is required?

If so what level would you consider appropriate to reflect the impact on road users and what evidence do you have to support this?

Q4: Do you agree that Chapter 10 of the Co-ordination Code of Practice should be revised as proposed to encourage greater use of the discretion to waive or reduce overrun charges, when the impact on road users is not significant?

Q5: If you are responding on behalf of an authority, does your organisation already use the discretion to waive or reduce overrun charges?

If so please provide examples of the occasions when this discretion has been used and, where possible, an indication of the range of charge levels imposed and the frequency with which charges have been reduced or waived.

Q6: What factors would influence the use of discretion by authorities?

Impact Assessment

- 3.7** The Impact Assessment drafted by the Department details costs and benefits associated with the proposed amendments to the 2009 Regulations.

Q7: Does the impact assessment identify the main costs and benefits likely to arise from the proposal?

Do you disagree with any of the assumptions in the impact assessment?

If so why?

Please provide justification supported with data for using alternative assumptions.

General

Q8: Are there any additional issues that are not covered by this consultation?

If so, please describe why and provide supporting evidence.