
STATUTORY INSTRUMENTS

2011 No. 0000

HIGHWAYS, ENGLAND

**The Street Works (Charges for Occupation of the Highway)
(England) Regulations 20XX**

<i>Made</i>	- - - -	2011
<i>Laid before Parliament</i>		2011
<i>Coming into force</i>	- -	2011

The Secretary of State for Transport makes the following Regulations in exercise of his powers conferred by sections 74A, 104(1) and (3) of the New Roads and Street Works Act 1991(a).

Citation commencement and expiry

1.—(1) These Regulations may be cited as the Street Works (Charges for Occupation of the Highway) (England) Regulations 20XX.

(2) They come into force on [insert date] 20XX.

(3) They cease to have effect on [insert date which is 7 years after the coming into force date] 20XX unless revoked with effect from an earlier date.

(4) These Regulations apply to England.

Interpretation

2. In these Regulations—

“the 1980 Act” means the Highways Act 1980(b);

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

“the 2004 Act” means the Traffic Management Act 2004(c);

“the 2009 Regulations” means the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009(d);

“actual start of works notice”, “works clear notice” and “works closed notice” mean notices given in accordance with regulation 6 of the 2009 Regulations;

(a) 1991 c.22. Section 74A was inserted by the Transport Act 2000 (c.38), section 255 and by the Traffic Management Act 2004 (c.18), section 40. The functions of the Secretary of State under sections 74A and 104 are, so far as exercisable in relation to Wales, vested in the Welsh Ministers. Those functions were transferred to the National Assembly for Wales, by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2, Schedule 1. By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c.32), they were transferred to the Welsh Ministers.

(b) 1980 c.66.

(c) 2004 c.18.

(d) S.I. 2009/303.

“approved authority” means a local highway authority approved by an order made by statutory instrument by the Secretary of State pursuant to section 74A(2) of the 1991 Act; and

“traffic-sensitive street” means a street designated as traffic-sensitive under section 64 of the 1991 Act.

Application of Regulations

3.—(1) These Regulations apply to every maintainable highway other than a footpath, a bridleway, a highway in relation to which a pedestrian planning order is in force, and a highway whose use by vehicular traffic is prohibited by a traffic order unless that prohibition is only at particular times.

(2) These Regulations do not apply to a local highway authority unless it is an approved authority.

(3) For the purpose of this regulation—

- (a) “bridleway” and “footpath” have the meaning given in section 329(1) of the 1980 Act;
- (b) “pedestrian planning order” means an order made under section 249(2) or (2A) of the Town and Country Planning Act 1990(a); and
- (c) “traffic order” means an order made under section 1, 6, or 9 of the Road Traffic Regulation Act 1984(b).

Prescribed Charges

4.—(1) Subject to paragraph (4) an approved authority may require an undertaker to pay the charges calculated in accordance with paragraphs (2) and (3) for the duration of street works executed by the undertaker in a highway to which these Regulations apply.

(2) Subject to paragraph (4), the charges shall be the product of the applicable daily rate of charge indicated in paragraph (3) and the number of days comprising the duration of the works.

(3) The daily rate of charge applicable is £2,500.

(4) An approved authority may reduce the amount, or waive payment, of a charge—

- (a) in any particular case,
- (b) in such classes of case as it may decide,
- (c) in all cases,
- (d) in all cases other than a particular case, or
- (e) in all cases other than such classes of case as it may decide.

Duration of Works

5.—(1) For the purpose of these Regulations, the duration of street works shall begin on the date—

- (a) specified in the actual start of works notice as being the date that the works have begun; or

(a) 1990 c.8.

(b) 1984 c.27. Sections 1,6 and 9 were amended by the New Roads and Street Works Act 1991 (c.22), section 168 and Schedule 8, paragraphs 17, 21 and 23 and modified by the Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992 (S.I. 1992/1217) (“the Tramcars Regulations”). Sections 1 and 6 were also amended by the Environment Act 1995 (c.25), section 120 and Schedule 22, paragraph 36. Section 1 was also amended by the Transport Act 2000, section 161 and Schedule 11, paragraphs 6 and 7. Sections 6 and 9 were amended by the Local Government Act 1985 (c.51), section 8 and Schedule 5, paragraph 4 and section 9 was also amended by the Road Traffic Act 1991 (c.27), section 48 and Schedule 4, paragraph 24. Section 14 was substituted by the Road Traffic (Temporary Restrictions) Act 1991 (c.26), section 1(1) and Schedule 1 and modified by the Tramcars Regulations.

- (b) where the approved authority or undertaker can prove that the actual start of works notice is incorrect, the date that the works began.
- (2) For the purpose of these Regulations, the duration of street works shall end on the date—
- (a) specified in the works clear notice or works closed notice as being the date that the works have ended; or
 - (b) where the approved authority or undertaker can prove that the notice given is incorrect, the date that the conditions in either regulation 6(3) or, as the case may be, 6(4) of the 2009 Regulations were met.
- (3) Subject to paragraph (6), the duration of works will be deemed to have come to an end in respect of any street works in the circumstances set out in paragraph (4), if the requirements of paragraph (5) are met.
- (4) The circumstances referred to in paragraph (3) are that—
- (a) subject to sub-paragraph (c), the undertaker has—
 - (i) completed interim reinstatement, or as the case may be permanent reinstatement, of the highway;
 - (ii) endeavoured to remove all signing, lighting and guarding;
 - (iii) removed all remaining spoil, unused materials and other plant; and
 - (b) but for sub-paragraph (c), the duration of the street works would have come to an end; and
 - (c) a single item of signing, lighting or guarding remains on the highway.
- (5) The requirements referred to in paragraph (3) are that—
- (a) the approved authority has—
 - (i) informed the undertaker of the identity and location of the single item referred to in paragraph (4)(c);
 - (ii) requested the undertaker to remove it; and
 - (b) the undertaker has complied with the request by the end of the next working day following the day on which the request was received.
- (6) The requirements in paragraph (5) will not apply if the approved authority has not informed the undertaker of the identity and location of the single item referred to in paragraph (4) (c), in which case the works will be deemed to have come to an end in any event.
- (7) An approved authority may require an undertaker to pay a charge of a single payment of £100 if the circumstances in paragraphs (4) and (5) arise.
- (8) For the purpose of this regulation—
- “interim reinstatement” and “permanent reinstatement” shall have the meaning given in the definitions paragraph of the Code of Practice entitled “Specification for the Reinstatement of Openings in Highways – Third Edition” dated April 2010^(a) and approved by the Secretary of State for Transport on 29th March 2010 as revised or re-issued from time to time.

Exemptions

- 6.—(1) Charges shall not apply to—
- (a) street works in a street which is not a traffic-sensitive street;
 - (b) street works—
 - (i) in the footway of a traffic-sensitive street at a traffic-sensitive time, or
 - (ii) in a traffic-sensitive street, other than at a traffic-sensitive time,
 if the street works do not involve breaking up the street or tunnelling or boring under it;

(a) ISBN 9780115531415

- (c) street works consisting only of the creation of holes of less than 3 centimetres in diameter, for investigatory purposes;
 - (d) replacing poles, lamp columns or signs in the same location; or
 - (e) pole testing.
- (2) For the purpose of this regulation—
“footway” has the meaning given in section 329(1) of the 1980 Act.

Payment

7.—(1) An undertaker shall, on receipt of a request in writing, pay to the approved authority the amount of the charge calculated in accordance with regulation 4(2), 4(3) or 5(7).

(2) Charges are only payable in respect of street works where the approved authority has given the undertaker, not later than three months after receipt of a works clear notice or a works closed notice, a request in writing setting out the charges payable.

(3) Where an approved authority is required to give a request in writing, such request may be given by electronic communication, by post or by hand delivery to the undertaker.

Application of charges and keeping of accounts

8.—(1) An approved authority may deduct from charges received from an undertaker pursuant to these Regulations the reasonable costs of operating the scheme under which they are paid and shall apply the net proceeds for purposes intended to reduce the disruption caused by street works.

(2) An approved authority shall keep and publish accounts of sums received by way of charges pursuant to these Regulations.

(3) The accounts published in paragraph (2) shall include details as to how the approved authority has applied any net proceeds in accordance with paragraph (1).

Revocation

9. The Street Works (Charges for Occupation of the Highway) (England) Regulations 2001(a) are revoked.

Signed by authority of the Secretary of State for Transport

Date

Parliamentary Under Secretary of State
Department for Transport

(a) S.I. 2001/4060.

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations revoke and replace the Street Works (Charges for Occupation of the Highway) (England) Regulations 2001 (“the 2001 Regulations”). They provide for the payment of charges, (by reference to the duration of works), by an undertaker to an approved local highway authority when executing certain street works.

These Regulations will cease to have effect on [].

Regulation 4 prescribes the daily charge payable. Provision is made for the highway authority to reduce or waive a charge in various cases. The daily rate of charge therefore represents a maximum charge.

Regulation 5 defines the duration of works for the purposes of section 74A(6) of the 1991 Act and for the purposes of calculating any charges. The daily charge will not be applicable at the same time that any overrun charges are applicable under the 2009 Regulations. Where the works would have ended when the highway was returned fully to public use, but for the presence of a single item of signing, lighting or guarding, the duration of works will be deemed to have come to an end and the charge thereafter will consist of a single payment of £100, providing the highway is otherwise satisfactorily reinstated and the undertaker has removed the single item within the time limit specified following the highway authority’s request to do so

Regulation 6 provides for certain exemptions from the charge.

Regulation 7 requires the charge to be paid by undertakers on receipt of a request in writing.

Regulation 8 provides for the application of charges and keeping of accounts.

Regulation 9 revokes the 2001 Regulations.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Transport, zone 2/06, Great Minster House, 76 Marsham Street, London SW1P 4DR and will be published alongside the Explanatory Memorandum which is available on the OPSI website.