

10. CHARGING SCHEMES

NRSWA, as amended by the Transport Act 2000 and the TMA, contains provision for two charging schemes:

- section 74A – charges for occupation of the highway; and
- section 74 – charges for unreasonably prolonged occupation of the highway.

10.1 Section 74A – Charges for Occupation of the Highway

Section 74A requires undertakers to pay a daily charge for occupation of the highway. This is called ‘Lane Rental’.

Between March 2002 and March 2004, section 74A was piloted in Middlesbrough and Camden.

10.2 Section 74 – charges for unreasonably prolonged occupation of the highway

Section 74 of NRSWA allows highway authorities to charge undertakers if street works are unreasonably prolonged (ie take longer than previously agreed).

The regulations, The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009 apply to every publicly maintainable highway, except:

- a footpath or bridleway;
- a highway with a pedestrian planning order in force; and
- a highway where vehicular traffic is prohibited – unless that prohibition is restricted to particular times.

If the works take longer than either the “Prescribed Period” or the “Reasonable Period”, described later in this chapter, they become ‘unreasonably prolonged’ – and the highway authority may levy a charge for each day, or part of a day, in excess of the prescribed or reasonable period.

10.3 Exempt works

Section 74 charges cannot be levied against the following work, as long as it does not involve breaking up, tunnelling or boring under the street:

- works in non traffic-sensitive streets;
- works in the footway of traffic-sensitive streets, at traffic-sensitive times;
- works in traffic-sensitive streets at non traffic-sensitive times;
- replacing poles, lamps, columns or signs in the same location; or
- pole testing.

In addition, charges may not be levied against:

any small diameter holes of less than 30mm diameter created for investigatory purposes; for example bar holes; or

works carried out by, or on behalf of, a highway authority.

If works are exempt, the undertaker must record the appropriate charge exemption in the section 55 or section 57 and Works Clear/Closed notices.

10.4 Prescribed Period

The “Prescribed Period” is the period during which no overrun charges can be levied. It has been set by the Secretary of State, in Regulations, at two days, starting on the day works begin.

The prescribed period does not relate to time required to carry out any particular type of works. Therefore, it is not to be used to judge the duration of proposed works.

10.5 Reasonable Period

A “Reasonable Period” is a period agreed between the undertaker and the highway authority, as reasonable for the street works in question. In default of agreement, it is the period determined by arbitration to be reasonable.

The reasonable period should be agreed within two days of receipt of the notice of proposed minor or immediate works, or five days for major or standard works.

If the highway authority wants to challenge the proposed duration, it can do so by giving written notice of its own estimated duration of works and reasons for the challenge. The undertaker may either accept this new estimate as the reasonable period, or start discussions with the street authority, by sending a non-statutory duration challenge non-acceptance notice. See 8.2.5.

If the works are prolonged due to reasonably unforeseen circumstances, such as weather or ground conditions, the highway authority and undertaker should agree a revised duration. See 8.2.6.

10.6 Duration of works

All notices should include estimated start and end dates so that the duration can be calculated.

For section 74 purposes, the estimated duration of works is measured from the start date to the end date given in the notice of actual start. However, the actual duration used to assess whether works have overrun – is measured from the notice of Actual Start to the completion of all activities in that phase of works, including any necessary reinstatement. See 8.2.4.

Interim and permanent reinstatements are separate phases. See 2.8. The period between these cannot be considered as an overrun provided the site has been properly cleared and fully returned to public use. In other words, all spoil, excess

materials, stores, plant and equipment and all signs, lighting and guarding must be removed from site before works can be regarded as finished.

Further works to complete the reinstatement, for example the replacement of road markings where delay is permitted by the specification, should be indicated by using the appropriate phase type, such as “interim reinstatement”. This includes circumstances where other materials in the highway are permanent.

10.7 Section 74 notice types

| Table 10.1 Notices for section 74 | |
|---|------------|
| Actual Start (sections 74 (5B) and 74 (5C)) | See 8.2.4 |
| Challenge to Duration Estimate | See 8.2.5* |
| Revised Duration Estimate | See 8.2.6 |
| Works Clear (section 74 (5C)) | See 8.2.7 |
| Works Closed (section 74 (5C)) | See 8.2.8 |
| <i>*When challenging a duration estimate, highway authorities should provide the reason for the challenge</i> | |

10.8 Informal warning

Highway authorities may wish to consider sending undertakers an informal warning where a works clear or works closed notice has not been received after the end date specified in the works start notice. This warning could be automatically generated. A non statutory Informal Overrun Warning notice for this purpose is included in the Technical Specification for EToN.

10.9 Charging regime

The maximum permissible charge varies according to whether the street is designated traffic-sensitive, or if it is not designated traffic-sensitive the type of work, and the road category.

Road category is an indication of the importance of the street – 0 being the highest, 4 the lowest. Information about determining a road’s category can be found in the *Specification for the Reinstatement of Openings in Highways*. Roads carrying in excess of 125 million standard axles each year (the upper limit for category 0 roads) will be treated as category 0 roads for the purposes of overrun charges.

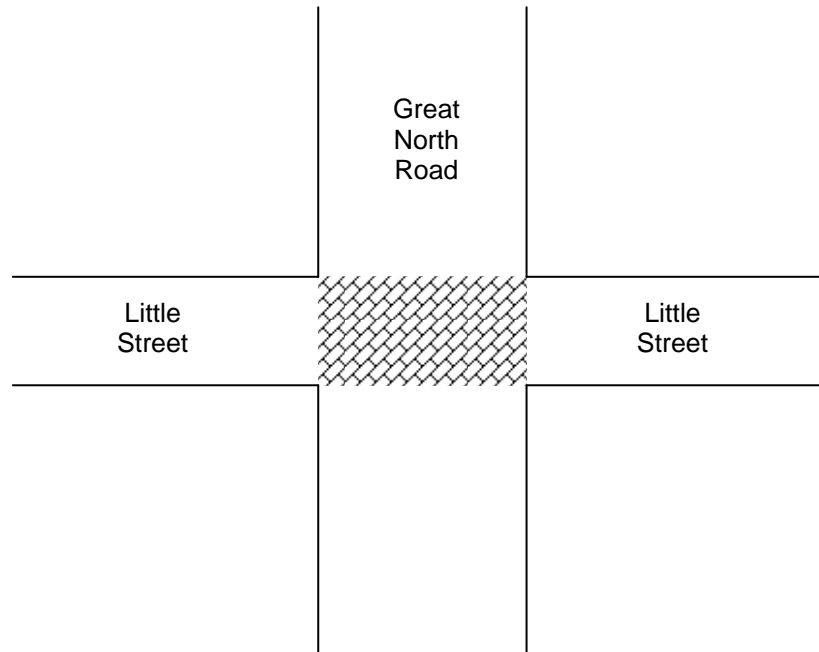
The road category, as given in the Additional Street Data, should be treated as

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definitive. If road categories have not been entered on the NSG, they will be treated as category 4 for purposes of overrun charges. Highway authorities must therefore ensure that information on the NSG is up to date.

When working in an area that could be regarded as belonging to more than one street, charges should apply to the street with the highest road category. This is of particular significance when working at a junction.

In the plan below, Little Street is a category 4 road and Great North Road is a category 2 road. If an undertaker proposes works in the central area, marked in a herringbone pattern, notice should be given against Great North Road. If Great North Road and Little Street are in different highway authorities the notice should be given against Great North Road but copied to the authority responsible for Little Street.



The charges will be applied according to Table 10.2, which sets out the maximum charge for each day that works overrun.

Table 10.2 Maximum daily 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 |
| * Roads carrying in excess of 125 million standard axels each year (the upper limit for category 0 roads) will be treated as category 0 roads for the purposes of overrun charges. | | | |
| ** traffic-sensitive street as designated under section 64 of NRSWA. | | | |

The table above sets out the maximum daily charges. The highway authority has discretion to either reduce or waive the charge in such circumstances that they deem appropriate. In considering how to exercise this discretion, authorities should examine the particular circumstances of each case. This might include taking account of the actual impact of the works on traffic flow, and a judgement about an undertaker's likely behaviour in response to the proposed charge. .

The intention behind overrun charges is to encourage undertakers to complete works in the highway within the planned duration. If an undertaker is unable to do so then they should seek an extension to the works duration, which authorities should not withhold unreasonably.

The highway authority must set out the charge payable to the undertaker within three months of receipt of a works clear or works closed notice.

Some roads are only traffic-sensitive (TS) on certain days or at specific times of the day. Overrunning works on streets that are TS on certain days will be charged at the non TS rates for days when the street is not TS and at TS rates when it is. If the street is only TS at specific times of day, overrunning works will be charged at the TS rate.

Both highway authorities and undertakers should take care to ensure that the facts used for proposing or disputing charges are accurate, along with the works type and category of road. Where there is evidence that the dates given in notices were incorrect the charges should be based on the evidence. If incorrect information has been given in a notice, then the highway authority may issue a fixed penalty notice if the highway authority considers an offence has been committed.

10.9.1 Mitigated charges following reinstatement

In most circumstances, if either the prescribed or reasonable period has ended and reinstatement (either interim or permanent) has been completed and noticed but the site has not been fully returned to public use (ie if spoil, excess materials, stores, plant and equipment, signs, lighting or guarding have not been removed (see 10.6)), the undertaker will be liable for overrun charges.

If the highway authority discovers that an undertaker has endeavoured to clear the site and has left only a single sign or item of lighting or guarding in error after completing reinstatement, it is strongly recommended that they inform the undertaker the identity and location of the item. The undertaker will then have until the end of the next working day to remove the offending item and pay a nominal, one-off, charge of £100, regardless of the interval between reinstatement and full clearance of the site, as long as free movement of traffic along the highway is possible. This provides an alternative to paying the full charge where the undertaker has endeavoured to clear the site.

| Table 10.3 Mitigated Charge | |
|--|------------------------------|
| | All street categories |
| Major, Standard, Minor and Immediate works | £100 – one off charge |

If free movement of traffic is not possible, or the undertaker fails to clear the site by the end of the following working day they will be liable for the full overrun charges from the date the works were due to be completed and the site cleared.

Examples of single signs or items of lighting or guarding that may attract a mitigated charge if left in error can be found on the pages entitled “Basic signs and equipment you will need” and “Some other signs you may need for which you should refer to your supervisor” in *Safety at Street Works and Road Works: A Code of Practice*.

10.10 Remedial works

Remedial works to rectify defective reinstatements shall be dealt with as new works, with their own duration estimate. Any overrun on remedial works will be charged at the rate appropriate to the works category of the works that require remedial action.

10.11 Invoicing/paying the charge

Undertakers may query either an overrun charge being levied or the level of an overrun charge. Therefore, it is recommended that highway authorities and undertakers discuss overrun charges before an invoice is issued.

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If an overrun charge is disputed, the dispute resolution procedure in chapter 13 should be followed before going to arbitration or the court.

The undertaker should set up payment facilities, giving contact details, and agree methods of payment with street authorities' finance departments.

The main options for payment are:

- electronic payment using the Bankers Automated Clearing Services (“BACS”);

- on-line, via the street authority web site (if available);

- by post;

- in person; or

- by telephone.

Remittance advice should be processed quickly and accurately.

Electronic payment methods are strongly encouraged. However, it is an undertaker's responsibility to establish if its preferred payment method is accepted and the hours when payment can be made. If electronic payment is used a separate list explaining which charges the payments relate to needs to be supplied.

The highway authority has to keep accounts of the charges that it levies. Money obtained through levying charges can be used to pay for the cost of running the overrun charging scheme. Any excess must be used to develop and implement safe, integrated, efficient and economic transport facilities and services.