

Summary of responses to a Government consultation

Proposed amendment to the Charges
for Unreasonable Prolonged
Occupation of the Highway (Overruns)
regulations s74 New Roads and Street
Works Act

Summary of responses

Street works are essential for utility companies to maintain and repair the apparatus on which we all depend, but these works can sometimes cause a great deal of disruption to road users. In particular, works which overrun can cause high levels of disruption because the highway authority cannot plan for them.

When utilities are planning works they must agree with the highway authority how long it will reasonably take to complete them. If they take longer than this, the highway authority may impose an 'overrun charge' – so utilities are incentivised to complete their works on time. The regulations covering this are the [Street Works \(Charges for Unreasonably Prolonged Occupation of the Highway\) \(England\) Regulations 2009](#).

(<http://www.legislation.gov.uk/ukxi/2009/303/contents/made>)

The Department has a business plan commitment to increase the maximum level of overrun charge, to further incentivise behavioural change. A consultation on this took place for 12 weeks between 2nd March 2010 and 25 May 2010. The consultation applied only to England as Street works are a devolved matter in Scotland and Wales. The consultation put forward a significant increase in overrun charges, with £25,000 per day on our busiest roads.

The following is an analysis, by question, of the comments received to the consultation and the Government considered response:

Break down of respondents	
Company/Organisation	Number of Responses
Small Medium Enterprise	1
Large Company	4
Utility Company	22
Representative Organisation	13
Interest Group	1
Local Government	67
Central Government	1

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?

49% of respondents were content with the proposed level of charges and agreed that increased charges were necessary to ensure the utility companies complete their works within the agreed period.

There was concern amongst some highway authorities that higher charges would act as a deterrent on traffic sensitive streets, but could lead to works on non traffic sensitive streets being considered lower priority by undertakers. They might then divert labour and resources away from works on non-traffic sensitive streets leading to longer overruns related to these works.

Some highway authorities raised the concern that the higher charges for traffic sensitive streets should include footway works and carriageway works as their network management duty extended to all road users.

Of those who answered this question 48% did not support the overrun charges proposed in the consultation paper. Many of these were utilities who considered the current level of overrun charges already delivered significant incentive to ensure works do not overrun and therefore that the charges do not need to be increased. Some considered that the increased charges would be too high for small contractors, which could lead to job losses especially for those working under section 50 licences.

Many utilities considered that the increase in overrun charges could lead to highway authorities viewing the charges as a potential income stream rather than a mechanism to control overrunning streetworks. A number of utilities commented that if the increase was not intended to generate additional revenue for highway authorities, the charge income should be held by the Department for Transport. Some utilities stated that for parity's sake highway authority contractors should be subject to the same charges.

Some utilities considered the proposed charges were excessive and unjustified, and to compensate for this there should be a reduction in charges for works on category 3 and 4 minor roads and charges related to footways should be removed altogether.

Government response to Q1

The Government has reconsidered the charge levels and is now proposing a revised structure. Although still focused on the busiest traffic sensitive streets, it will now include a tiered charging structure. On traffic sensitive or protected category 0, 1 and 2 streets the daily overrun charge will increase on the fourth day of the overrun and for all subsequent days. This is to further incentivise utilities to reduce long overruns on the most critical streets.

For overrunning works that are wholly on the footway (which are less disruptive in nature) the maximum charge that can be levied will be the that for non traffic sensitive charge maximum, for that category of street even if the street is traffic sensitive or protected.

In addition to this, as described below in the response to questions 2 and 3, the Government considers there is a low correlation between the category of works and any congestion they cause. Therefore the charging differentials for different types of works are being removed.

Following consideration of the consultation responses the revised levels of charges will be as set out below:

Proposed Level of overrun charges	
Description of Street	Amount (£)
Traffic-sensitive or protected street which is a street in road category 0 or 1	5000 10000(fourth and subsequent days)
Other street which is a street in road category 0 or 1	2500
Traffic-sensitive or protected street in road category 2	3000 (first three days) 8000(fourth and subsequent days)
Other street in road category 2	2000
Traffic-sensitive or protected street in road category 3 or 4	750
Other street in road category 3 or 4	250

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?

61% who responded considered that there was not a close correlation between the level of congestion and the category of works.

A number stated that when considering the level of congestion a works might cause, factors such as the type of method used to undertake the works, the size of works or when the works take place are more relevant than the category of works. A small number of utilities did comment that major works take longer and therefore cause more disruption, and one respondent commented that the category of works had no link to the amount of congestion the works caused.

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?

67% of respondents strongly agreed that there should not be a separate charge category for immediate works.

A large number of utilities stated that immediate works are only undertaken in an emergency and that these works should be exempt from overrun charges. Some commented that there is more scope to overrun with immediate works as the nature of the works were unknown when the notice was submitted. Therefore a number of utilities considered the current (lower) overrun charges should be retained for such works.

Authorities stated that the period in days of agreed works can be revised when the utilities have further information on the nature of the works that are being undertaken. Many highway authorities considered that only the initial part of the works is really immediate, but considered the reinstatement of the works is often a lower priority for utilities due to lower overrun charges for immediate works. This leads to unnecessary occupation of the highway in these circumstances.

Government response for Q2 & 3

The Government considers that the category of works is not a key determinant of the daily level of disruption that overrunning works cause. Although immediate works cannot be avoided and are hard to plan initially, the agreed duration can be revised and highway authorities must take into account changes to estimated durations. Therefore having one charge rate for all works is reasonable.

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?

A majority of utilities agreed that placing further emphasis on discretion would encourage closer working with the highway authority. Many utilities felt that authorities do not use their powers of discretion widely at present and initially charge the maximum charge. They consider that a revision of chapter 10, is needed, placing further emphasis on discretion.

One utility commented that the Department for Transport should review a sample of overrun charges to ensure they are being administrated appropriately. Another utility also considered that authorities seem to have no systematic procedures for reducing charges.

A large number of Highway authorities considered the placing of further emphasis on discretion would increase the number of disputes. Some authorities consider there are already too many disputes as many utilities seek reductions on a larger number of overrun charges.

Some authorities considered that traffic flow should not be added into the guidance as something that should be taken into account when considering overrun charges. They felt that if traffic flow was added it would be very hard for authorities to levy overrun charges as authorities are unlikely to have sufficiently precise data to produce accurate enough estimates of the traffic flow disruption the works might have caused.

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?

A large number of different examples were produced of when authorities waived or reduced charges for example:

- Where the works and requisite traffic management is completely on the footway,
- Where a site on a footway on a traffic sensitive street overran by 6 days - here the authority negotiated with the utility and the original charge of £12,000 came down to £2,000,
- Where the utility has a good performance record and the overrun can be seen as a 'one off'.
- Where the street authority is experiencing ETON problems, and

Where utilities can prove there was a genuine administrative error.

Of the authorities which did not agree, 8 % said they rarely used discretion to waive or vary charges. They argued that undertakers knew the class of road, category of work, and the work that needs to be carried out (excluding emergency works), when notices were submitted - they should resource the work accordingly to finish on time.

There was also a view that utilities expected a reduced charge to be applied in every circumstance. These authorities felt that constant reduction in charges has in effect undermined the discretion to reduce charges as it is now seen as the norm.

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

Authorities stated there are many reasons to use discretion including:

- The level of charge.

- The notice type duration.
- Evidence proving certain situations.
- Whether the utility is co-operating (letting the authority know in advance the works are going to overrun).
- Prompt responses to agree or challenge overrun charges.
- Whether the overrun is due to external factors such as emergency services involvement.

Highway authorities stated that the later in the process the utility disputed the charge the less likely that some authorities would consider mitigating the charge.

- Some utilities considered factors that influenced the use of discretion included:
 - Category of the road.
 - Negative political pressure.
 - Budget restrictions.
 - Utility performance.
 - The level of planning of the works and the general level of co-operation between the authority and the specific utility.

Some authorities did state that charges are often reduced, sometimes to quite low levels to reach agreement with utilities as they are reluctant to take utilities to court to recover charges that utilities refuse to pay. The reluctance to take utilities to court is related to a lack of legal resources in the authority.

Government decision for Q 4, 5 and 6

The Government will work with the Highway Authorities and Utilities Committee (HAUC(UK)) to review the proposed changes to the Coordination Code, in light of the consultation responses and the decisions now being announced .

Q7. Does the impact assessment (IA) identify the main costs and benefits likely to arise from the proposals? Do you disagree with any of the assumptions in the impact assessment?

54% of respondents agreed that the IA identified the main costs and benefits.
51% of respondents agreed with the assumptions made in the IA.

Concern was raised that even if the increased charges were implemented, it was unlikely that there would be a noticeable reduction in congestion or disruption to the travelling public – it was too early to make further changes to charges only recently been introduced. The main concern raised was that the modelling in the IA was based on old data and from only 25 authorities. This did not give an accurate number of overruns to use to base modelling on.

Government response to Q7

The Government understands the limitation of the data contained in the IA, but substantial amendments to it now means it contains sensitivity analysis and a full listing of the assumptions that have been made. This provides a clearer summary and analysis of the costs and benefits related to this policy.

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

- There were many responses to this questions and they included:
- If the impact of prolonged occupation of the highway is so important why is there no increase in the percentage of fee payable inspections?
- Authorities are unable to more actively pursue utilities who fail in their duties and obligations to complete works promptly without sacrificing inspections.
- The Traffic Management Act introduces parity and as highway authority works account for 50% of road works legislation should be extended to make HA subject to overrun charges – this should include any increase in charges.
- Relations between utilities and highway authorities could be compromised with the introduction of these proposed charges.
- There is a need to review of the method of updating road categories – such as that for ‘traffic sensitive’ which has not been reviewed since its inception.
- Concern over the lack of adequate supervision by undertakers at all stages of their works.