

# REGULATORY IMPACT ASSESSMENT

## THE STREET WORKS (RECORDS) (ENGLAND) REGULATIONS 2002

### Purpose and Intended Effect

#### *(i) Identify the Issue and Objective*

The New Roads and Street Works Act 1991 (NRSWA) provides a legislative framework for street works activities, and is supported by regulations and codes of practice. There have been long standing concerns about the disruption, delay and inconvenience caused to road users, including businesses, public transport, private motorists, pedestrians and disabled people, by street works carried out by undertakers (eg gas, water, electricity and telecommunications firms).

As part of the framework for minimising such disruption, section 79 of NRSWA sets out the rules for the keeping of records by statutory undertakers as to the location of any apparatus of theirs, such as pipes or cables, which has been placed in the street. Section 79 also provides that the Secretary of State may make regulations that set out any circumstances under which different rules could apply. In turn, section 80 deals with cases where an undertaker carrying out work discovers apparatus belonging to another undertaker which was not marked, or was wrongly marked, on existing records. It provides that they should inform the owner of the apparatus or, where this is not possible, mark the apparatus on their own records and inform the local street authority. To date, neither the powers in section 79 nor those in section 80 have been activated.

Whilst NRSWA does not require a statutory Code of Practice on record keeping to be issued by the Secretary of State, the Highway Authorities and Utilities Committee (HAUC) - which comprises representatives of both utilities and highway authorities - has agreed that a non-statutory code should be issued, and that the principles in this Code - and the accompanying regulations - should be adopted not only by all undertakers carrying out street works under NRSWA but also by highway authorities in the recording of their own apparatus (although sections 79 and 80 do not legally apply to authorities' apparatus).

#### *(ii) Risk Assessment*

The risk of not activating the record-keeping powers is that the keeping of records of the location of apparatus would be less thorough. If accompanying regulations are not produced then it would not be possible to make separate arrangements for special circumstances, eg keeping records where issues of national security or commercial confidentiality are involved.

### Options

#### *(i) Options identified*

Earlier consultations were held in 1992 and 1996 on the proposed legislative regime for the keeping of records. A further consultation was carried out in May/June 2001.

The general view of both undertakers and highway authorities was that it would be appropriate to produce records regulations underpinning the relevant provisions in NRSWA. The main options were as follows:

(a) *do not produce regulations or a code of practice at this time.*

Individual undertakers already have certain obligations placed on them relating to the keeping of records, generally in the parent legislation governing their utility sector. It would therefore, in theory, be possible to rely upon the existing arrangements. However, this would mean that there was no common standard for the keeping of records, and would probably mean that they were kept to a lower and less accurate standard.

(b) *produce regulations and a code of practice covering both section 79 & 80.*

It would be possible to issue unified regulations placing obligations on undertakers under both sections 79 and 80 of NRSWA. However, in the light of the responses received to the formal consultation on the draft regulations, the Government does not believe on balance that it is justified at this stage in imposing a formal requirement for undertakers to record the location of apparatus other than their own, with punitive provisions if they do not do so, although it will continue to keep the situation under review. Therefore it does not propose to activate the section 80 powers at this stage.

(c) *produce regulations and a code of practice covering section 79 only.*

As stated earlier, individual undertakers already have a range of different obligations placed on them relating to the keeping of records. Inevitably this means that records will be kept to different levels of accuracy and to different standards. Making regulations under section 79 would allow the Government to set a common standard both for the keeping of records and also for making them available to those with a valid interest (eg other undertakers wishing to carry out work).

## *(ii) Issues of equity and fairness*

Most of the organisations affected are substantial bodies, eg utility companies. Some contractors carrying out work on behalf of the utilities could be smaller scale organisations.

## **Benefits**

### *(i) Identify the Benefits*

Street works inevitably cause some disruption to road users where the carriageway is reduced or the footway taken over by the works. This can lead to congestion and delay or longer journeys for traffic, a greater risk of traffic accidents, additional pollution where congestion is made worse and inconvenience to pedestrians. The aim of these regulations is to improve the knowledge of undertakers as to the exact

location of their and other undertakers' existing apparatus and thus to minimise the amount of excavation needed when carrying out works, and any disruption which results.

Better record keeping will allow for more effective advance planning of works by utilities or highway authorities. Where undertakers need to carry out work to their existing apparatus but do not possess accurate records of its exact location, it may be necessary to excavate over a relatively wide area until the apparatus is located. Accurate records enable undertakers to pinpoint where work needs to be carried out, thus limiting the size of excavations and any resulting disruption and minimising the effect on other apparatus located in the vicinity. This could avoid abortive work by reducing the risk of unexpectedly coming across apparatus during the course of works and, therefore, having to redesign works.

In turn, the keeping of accurate records can reduce the number of occasions where other utilities' equipment (eg a gas main) is accidentally damaged in the course of works, and the inconvenience which that causes to consumers, as well as the risk of injury to those carrying out the works and passers by. Such damage, by virtue of requiring subsequent investigation, excavation and repair, inevitably causes unnecessary disruption.

Overall, those benefiting will include utility companies themselves, businesses, private motorists, public transport operators and passengers, pedestrians and utility company customers.

#### *(ii) Quantifying and valuing the benefits*

These are not fully quantifiable at this stage. However, it is clear that better record keeping can help work to be carried out more quickly and effectively, by ensuring that operators are aware of the exact position of existing apparatus on which they may need to carry out maintenance works. This can remove the need to carry out exploratory works and reduces the risk of accidental damage to other operators' apparatus. This would benefit commercial and business traffic as well as other traffic and pedestrians. Reductions in pollution will benefit people living, working or travelling in the areas affected. There will also be benefits for undertakers themselves, in that better record keeping should help reduce the amount of excavatory work required in many cases and also reduce the number of occasions on which utility apparatus is damaged and the costs which this imposes on utilities.

Whilst it is difficult to assess accurately the annual cost of repairs needed because of damage to plant from other excavators, a recent assessment suggested that this could be in the region of £80 million for England as a whole.

### **Compliance costs for Business, Charities and Voluntary Organisations**

#### *(i) Business sectors affected*

Statutory undertakers, such as water, gas, electricity and telecommunications companies. There will be no impact on charities or voluntary organisations, except in the infrequent cases where they are also undertakers.

### *(ii) Compliance costs for a "typical" business*

These are not quantifiable at the current time. Given that utilities already need records for their own purposes, the additional cost of keeping them in the form prescribed by the regulations should be marginal. The cost of keeping accurate records would be offset by the fact that these can reduce the need for exploratory work to locate apparatus, and allay the cost of putting right damage caused accidentally to plant whose position is unknown or incorrectly recorded.

### *(iii) Total Compliance Costs*

See (i) and (ii) above.

A Competition Assessment has been carried out on the proposed measures, and DfT does not consider that the new proposals are likely to have a significant impact upon competition in the gas, electricity, water and telecommunications sectors.

### **Consultation with small business**

Most recently, consultation on draft regulations and a code of practice was held with the bodies most likely to be affected, such as highway authorities and individual undertakers, in May and June 2001. Further discussions have been held since then with utilities and local authorities.

### **Results of consultations**

Following the consultation a working party comprising undertakers, local authorities and (what is now) the Department for Transport (DfT) considered the responses and made a number of changes to the proposed legislative regime. The revised code of practice and the draft regulations have been approved by HAUC, representing undertakers and highway authorities.

### **Enforcement, Sanctions, Monitoring and Review**

A review of the new record-keeping regime is likely to be launched by HAUC and DfT in approximately two years time. This will consider how effectively the new regime has operated, the costs and benefits which have accrued to relevant parties as a result and whether further changes to the regime are required.

### **Summary and recommendations**

Given the need to reduce disruption from utility works, Ministers believe that it is important to minimise the number of unnecessary works. To that end it is vital that the location of all apparatus is recorded to a high standard. Therefore, Ministers consider that the powers under section 79 (but not 80) of NRSWA should be commenced and that regulations (having been amended following the consultation) should be laid before Parliament. A non-statutory Code of Practice has already been published.

**Contact point and date**

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17 December 2002

**DECLARATION**

I have read the Regulatory Impact Assessment and I am satisfied that the balance between cost and benefit is the right one in the circumstances.

**SIGNED BY RESPONSIBLE MINISTER .....**

**Date .....**

**Department .....**