

(i) STATUTORY INSTRUMENTS

2008 No. *

HIGHWAYS, ENGLAND

The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2008

<i>Made</i> - - - -	2008
<i>Laid before Parliament</i>	2008
<i>Coming into force</i> - -	2008

The Secretary of State for Transport, in exercise of the powers conferred by sections 74, 97(1), 104(1) and 104(3) of the New Roads and Street Works Act 1991(a), hereby makes the following Regulations:

Citation, commencement and application

1.— These Regulations may be cited as the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2008 and shall come into force on [] [] 2008.

(1) These Regulations apply as respects England only.

Revocation

2. Subject to regulation 3, the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2001(b) are hereby revoked.

Transitional arrangement

3. Subject to regulation 7(9) where an undertaker has given notice in respect of street works under section 54, 55 or 57 of the Act before the date on which these Regulations come into force, the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2001 shall continue to have effect in relation to those works and these Regulations shall not apply to them.

Interpretation

4. In these Regulations—

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

“address”, in relation to electronic communications, means any number or address used for the purposes of such communications;

“bridleway” and “footpath” have the meanings given by section 329 of the Highways Act 1980(c);

(a) 1991 c.22.
(b) S.I. 2001/1281.
(c) 1980 c.60

“the Code” means the Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters dated [] [] 2007 and approved by the Secretary of State on [] [] 2007, as revised and re-issued from time to time;

“cycle track” has the meaning given by section 329(1) of the Highways Act 1980;

“day” means a working day;

“electronic communication” has the meaning given by section 15(1) of the Electronic Communications Act 2000(a);

“immediate works” means urgent works or emergency works;

“major works” means—

(a) street works which have been identified in the annual operating programme of an undertaker, or which, though not specifically identified in such programme, would normally be planned or known about at least six months in advance of the date proposed for the works;

(b) street works, other than immediate works, where—

- (i) the street authority has indicated to the undertaker, or
- (ii) the undertaker considers,

that an order under section 14 of the Road Traffic Regulation Act 1984(b) (temporary prohibition or restriction on roads) is required; or

(c) street works, other than immediate works, the planned duration of which exceeds ten days;

“minor works” means street works, other than immediate works or major works, the planned duration of which does not exceed three days;

“pedestrian planning order” means an order made under section 249(2) or (2A) of the Town and Country Planning Act 1990(c);

“remedial works” means those works required to be carried out under section 72(3) of the Act;

“road category” means one of the road categories specified in paragraph 1.3.1 of Chapter S.1 of the code of practice entitled “Specification for the Reinstatement of Openings in Highways” dated June 2002(d) and approved by the Secretary of State for Transport on 30th June 2002, as revised or re-issued from time to time;

“standard works” means street works, other than immediate works or major works, the planned duration of which exceeds three days but does not exceed ten days;

“the Technical Specification” means the Technical Specification for the Electronic Transfer of Notices Produced by the Department for Transport and dated 5th July 2007 as revised or reissued from time to time;’

“traffic order” means an order made under section 1, 6 or 9 of the Road Traffic Regulation Act 1984;

“traffic sensitive street” means a street designated by a street authority as traffic sensitive pursuant to section 64 of the Act and in a case where a limited designation is made pursuant to section 64(3) any reference to works in a traffic sensitive street shall be construed as a reference to works to be executed at the times and dates specified in such designation;

“urgent works” means —

(a) street works, other than emergency works, whose execution at the time when they are executed is required (or which the person responsible for the works believes on reasonable grounds to be required)—

(a) 2000 c.7 Section 15(1) was amended by the communications Act 2003 c.21, section 406(1) and schedule 17, paragraph 158

(b) 1984 c.27

(c) 1990 c.8

(d) 15BN 0 11 552538 6.

- (i) to prevent or put an end to an unplanned interruption of any supply or service provided by an undertaker;
 - (ii) to avoid substantial loss to the undertaker in relation to an existing service; or
 - (iii) to reconnect supplies or services where the undertaker would be under a civil or criminal liability if the reconnection is delayed until after the expiration of the appropriate notice period; and
- (b) includes works which cannot reasonably be severed from such work.

Application of Regulations

5. These Regulations apply to every maintainable highway which is of a road category 0,1,2,3 or 4 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.

Notices

6.—(1) An undertaker executing street works in a highway to which these Regulations apply shall give the highway authority for the highways in which those street works are being executed notice of the beginning of those works specifying the street in which the works are to be carried out (“actual start of works notice”) not later than the end of the day following the day on which the works begin.

(2) When an undertaker has completed interim reinstatement of a highway and has returned the highway fully to public use he shall give the highway authority notice thereof (“works clear notice”) not later than the end of the day following the day on which the highway was returned fully to public use.

(3) When an undertaker has completed permanent reinstatement of a highway and has returned the highway fully to public use he shall give the highway authority notice thereof (“works closed notice”) not later than the end of the day following the day on which the highway was returned fully to public use.

(4) Any notice shall be in the form, or to the like effect as the form, contained the Technical Specification.

Prescribed charges and prescribed period

7.— (1) The period prescribed under section 74(1)(a) of the Act shall be 2 days starting on the day on which the works begin.

(2) The duration of street works does not include any period during which an undertaker is carrying out remedial works required by an authority pursuant to section 72(3) of the Act. For the purposes of these regulations, such remedial works shall be treated as separate street works.

(3) Subject to paragraph 10, where the duration of street works carried out by an undertaker in a maintainable highway to which these Regulations apply exceeds the prescribed period or a reasonable period, whichever is the longer, the undertaker shall pay the highway authority a charge.

(4) Paragraph 3 shall not apply to-

- (a) works which require the opening of streets which are not traffic sensitive;
- (b) replacing manhole or chamber covers, where that does not involve breaking up a street which is not traffic sensitive;
- (c) replacing poles, lamps columns or signs in the same location, where that does not involve breaking up the street;
- (d) pole testing, where that does not involve breaking up the street;
- (e) works not involving excavation of the street, or tunnelling or boring under the street; or
- (f) bar holes.

(5) Subject to paragraph 7 the charge shall be payable for each day (or part of a day) during which the street works in each and every street mentioned in the actual start of works notice continue beyond the longer of the period referred to in paragraph (1) or a reasonable period and shall be of an amount to be determined in accordance with paragraph (6).

(6) Where, in relation to a street of any description set out in column (2) of the Table in relation to an item in column (1), an undertaker executes street works of any category set out in column (3), the amount of the charge shall be the amount set out in relation to each category in column (4).

(1) Item No.	(2) Description of street	(3) Category of street works	(4) Amount of charge (£)
1.	Street of road category 0 or 1	Major works	2,500
		Standard works	2,500
		Minor works	500
		Immediate works	500
2.	Street of road category 2	Major works	2,000
		Standard works	2,000
		Minor works	500
3.	Street of road category 3 or 4, being a traffic sensitive street	Major works	750
		Standard works	750
		Minor works	250
		Immediate works	250
4	Street of road category 3 or 4, not being a traffic sensitive street	Major works	250
		Standard works	250
		Minor works	100
		Immediate works	100

(7) Where after the expiry of the period referred to in paragraph (1) or a reasonable period which ever is the longer and

- (a) The undertaker has completed interim reinstatement or has completed permanent reinstatement, as the case may be, of the highway and
- (b) there remains on the highway spoil, unused materials, signing, lighting, guarding or other plant or equipment such that the highway has not been fully returned to public use and
- (c) the highway authority has informed the undertaker that items referred to in (b) remain on the highway and must be removed by the end of the day following the day on which the undertaker was so informed and
- (d) the undertaker has complied with (c)

the charge will be [£50] in respect of each and every works.

(8) The amount of the charge in respect of remedial works shall be the same as the amount which would have been applicable to the street works to be remedied irrespective of the category of the remedial works.

(9) For the purposes of these regulations the charge in respect of remedial works notified before the coming into force of these regulations shall be calculated as if the works referred to in the 1991 regulations and set out in column (1) were works of the description set out in column (2).

(1) Works Category 1991 Regulations	(2) Equivalent Category

Major Projects	Major Works
Standard	Standard
Minor	Minor
Emergency	Immediate
Urgent	Immediate
Special Urgent	Immediate

(10) A highway authority may reduce the amount, or waive payment, of a charge in any particular case, in such classes of case as they may decide, or in all cases other than a particular case or such class of cases as they may decide.

(11) Charges are only payable in respect of street works where the highway authority have given the undertaker, not later than three months after receipt of a works clear notice or a works closed notice, an account in writing setting out the charge payable.

Estimates of duration of works

8.— (1) If an undertaker has reason to believe that the duration of the works will exceed the prescribed period he shall give to the highway authority notice containing an estimate of their likely duration—

- (a) in the case of works in connection with the initial placing of apparatus in the street in pursuance of a street works licence, together with his application for the licence;
- (b) in the case of other works (not being emergency works) together with his notice under section 55 of the Act (notice of starting date); or
- (c) in the case of emergency works, as soon as reasonably practicable after the works are begun.

(2) The period of duration contained in a notice given under paragraph (1) shall be taken to be agreed by the authority to be a reasonable period unless they give notice in writing to the undertaker within 2 days of receipt of the notice containing the estimate that they object.

(3) A notice by an authority under paragraph (2) shall contain their own estimate of a reasonable period for the duration of the works.

Further and revised estimates of duration of works

9.—(1) If it appears to an undertaker that, by reason of matters not previously foreseen or reasonably foreseeable, the duration of works—

- (a) is likely to exceed the prescribed period;
- (b) is likely to exceed the period stated in its previous estimate; or
- (c) is likely to exceed the period previously agreed or determined under section 74(2) of the Act to be a reasonable period,

it shall give to the authority notice in writing containing an estimate or revised estimate.

(2) Where a notice in writing containing an estimate or revised estimate is submitted under paragraph (1) any previous estimate, agreement or determination shall cease to have effect and the period stated in the new estimate shall be taken to be agreed by the highway authority to be reasonable unless it gives notice in writing to the undertaker within 2 days of receipt of the estimate or revised estimate that they object.

(3) A notice by an authority under paragraph (2) shall contain their own estimate of the period of duration.

Application of charges and keeping of accounts

10.— (1) A local highway authority may deduct from prescribed charges received from an

undertaker the reasonable costs of operating the scheme under which they are paid and shall apply the net proceeds for the purpose of developing or implementing policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within their area.

(2) A local highway authority shall keep accounts of sums paid by way of charges and the application thereof in a form approved by the Secretary of State for Transport.

Offence

11. An undertaker who without reasonable cause fails to give any notice required by these Regulations commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Prescribed form of notice

12.— (1) Any notice for the purposes of section 74 of the Act or required by these Regulations shall be in, the or to the like effect as, the form contained in the Technical Specification.

(2) Any such notice shall, in addition to any information required by the 1991 Act to be contained in the notice, also include such other information as may be required by that Specification to complete the parts of the form referred to in paragraph (1) which are indicated in that form as being relevant to the notice.

Manner of service of notice

13. Where a person —

(a) has given a street authority an address for services of a notice using electronic communication; and

(b) has not notified the authority that the address is withdrawn for that purpose

a notice shall be given by sending it using electronic communications to that person at that address, in accordance with the condition set out in paragraph (3).

(2) in any other case a notice shall be given by delivering it in writing to the person to whom it is to be given, or by leaving it at his proper address or by sending it by first class post to him at that address or in any other manner agreed with that person to whom it is to be given.

(3) The condition mentioned in paragraph (1) is that the notice shall be

(a) capable of being accessed by the person mentioned in that paragraph;

(b) legible in all material respects; and

(c) in a form sufficiently permanent to be used for subsequent reference

and for this purpose “legible in all material respects” means that the information contained in the notice is available to that person to no lesser extent than it would be if given by means of notice in printed form.

(4) Subject to section 98(2) of the 1991 Act (reckoning periods) where an electronic communication is used for the purpose of giving a notice, then, unless the contrary is proved, the notice shall be deemed to be given on the day and at the time of day recorded by the transmitting apparatus as being the day and the time of satisfactory completion of the transmission.

(5) For the purpose of paragraph (2), the proper address of any person to whom notice is to be given shall be, where such person has furnished to the street authority giving the notice a postal address for service of notices, that address, and otherwise, in the case of a corporation, the registered or principal office, of the corporation, or in any other case, the last known address of such person.

Signed by authority of the Secretary of State for Transport

[] 2008

Parliamentary Under Secretary of State,
Department for Transport

into force

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