

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. Both pilot schemes were inconclusive and, for the time being, this provision will not be utilised.

10.2 Section 74 - Charges for Unreasonably Prolonged Occupation of the Highway

Section 74 of NRSWA, enables highway authorities to charge undertakers if street works in the publicly maintainable highway are unreasonably prolonged.

The regulations, *The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) 2007* apply to every maintainable highway other than:

- a footpath or bridleway
- a highway with a pedestrian planning order in force; and,
- a highway prohibited for use by vehicular traffic by a traffic order - 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 street authority may levy a charge for each day, or part of a day.

If the works are prolonged due to reasonable circumstances, such as unforeseen weather or ground conditions, the parties should agree a revised duration. See 8.2.5.

10.3 Exempt Works

Certain types of work are exempt from section 74 charging:

- works in non traffic-sensitive streets that do not involve excavation of, or boring or tunnelling under, the highway
- replacing manhole or chamber covers - that do not involve breaking up the street which is not traffic sensitive.
- replacing poles, lamps, columns or signs in the same location where that does not involve breaking up the street
- pole testing that does not involve breaking up the street
- bar holes
- works carried out on behalf of a highway authority.

If one of the exemptions applies, the undertaker must record the appropriate charge exemption in the section 55 or section 57 and Works Clear/Closed notices - see the Technical Specification for EToN.

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 should not 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.

Within two days of receipt of the notice of proposed works, a reasonable period should be agreed. The undertaker should include a start and end date on the notice, from which the highway authority can decide whether the proposed duration is reasonable. If the highway authority does not challenge the proposed period within five days for major or standard works or two days for minor or immediate works, it becomes the reasonable period by default.

Should the highway authority wish to challenge the proposed duration they can give 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 initiate discussions with the street authority, by sending a non-statutory non-acceptance of section 74 challenge notice.

If no agreement is reached, the dispute resolution procedure in chapter 13 should be followed before referring the matter to arbitration. Until a dispute is resolved, the works may proceed, but the street authority's estimate of the duration stands as the reasonable period.

If the end date and duration of works have changed once the matter has been resolved, the undertaker should issue another notice of proposed works with the revised timescales. This should not be challenged. The records should be altered manually if it is too late to issue another notice.

10.6 Duration of Works

All notices should estimate 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 accepted as 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 signing, lighting and guarding should 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 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
Revised Duration Estimate	See 8.2.5
Challenge to Duration Estimate	See 8.2.6 *
Works Clear (Section 74 (5C))	See 8.2.7
Works Closed (Section 74 (5C))	See 8.2.8
* When challenging a duration estimate, it would be useful if highway authorities provide the reasoning behind the challenge	

10.8 Informal Warning

Highway authorities may wish to consider sending undertakers an informal warning when works have begun to attract overrun charges. A non statutory notice for this purpose is included in the Technical Specification for EToN.

10.9 Charging Regime

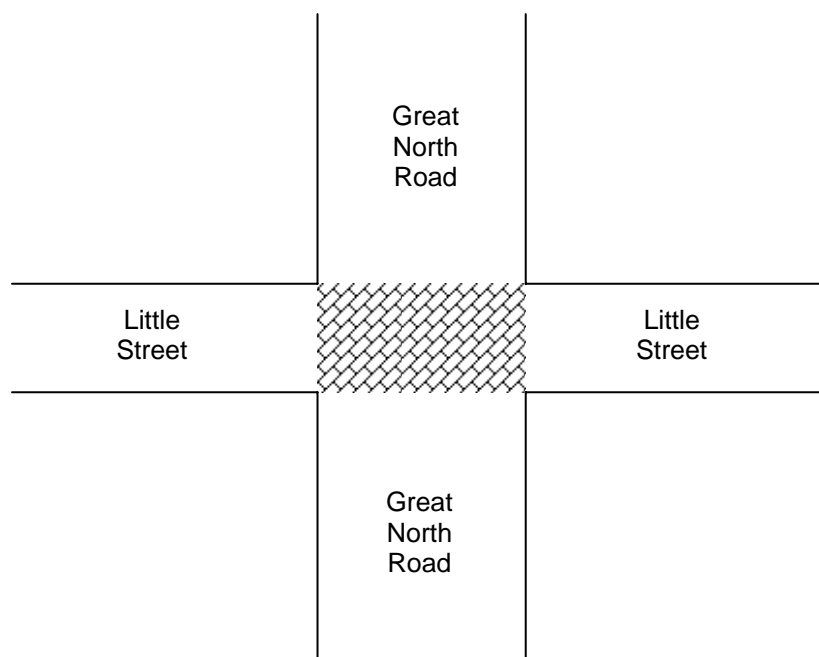
Charges vary according to the type of work, the road category and whether the street is traffic sensitive.

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 the Highway*.

The road category, as given in the Additional Street Data, should be treated as definitive. If a street authority has not entered road categories on the NSG, they will all be treated as category 4 for purposes of overrun charges. Street authorities must therefore ensure that information on the NSG is up to date.

When working in any area, which could be regarded as belonging to more than one street, notice should be given against 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.



The charges will be applied according to Table 8, which sets out the maximum charge for each day that works overrun. Highway authorities may also reduce or waive charges in particular cases.

Table 10.2: Maximum daily charges

	Road Category 0 & 1	Road Category 2	Road Category 3 & 4 (TS)	Road Category 3 & 4 (not TS)	All exempt works
Major works and Standard works	£2,500	£2,000	£750	£250	See section 10.3
Minor works and Immediate works	£500	£500	£250	£100	See section 10.3

Some roads are only traffic-sensitive (TS) on certain days or at specific times of the day. Over-running 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, over-running works will be charged at the TS rate.

Both 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 an authority may issue an FPN, if the authority considers that an offence has been committed.

The *Code of Practice for Inspections* sets out the arrangements for inspections, which will include additional chargeable inspections that may be undertaken by the authority in relation to section 74. It also details how these should be carried out.

10.9.1 Mitigated charges following reinstatement

If the prescribed or reasonable period, has ended and reinstatement (either interim or permanent) has been completed but the site has not been fully returned to public use (ie if spoil, excess materials, stores, plant and equipment, signing, lighting or guarding has not been removed (see 10.6)), the undertaker will be liable for section 74 charges.

When the highway authority discovers that works have been reinstated but not fully cleared, they should inform the undertaker and give them until the end of the following working day to clear the site. If the undertaker does this, they will only be charged a token penalty of [£50], regardless of the interval between reinstatement and full clearance of the site. If the undertaker fails to clear the site by the end of the following working day they will be liable for the full section 74 charge from the date the works were reinstated.

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 original works.

APPENDIX B: TRANSITIONAL ARRANGEMENTS

B.1 Introduction

This appendix sets out the arrangements for transition from the provisions of the 1992 Regulations to those of 2007 Regulations when they come into force. This incorporates amendments to the noticing, directions and designation provisions of NRSWA introduced by the Traffic Management Act 2004 and the associated new Regulations. These are:

- *The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 ('Notices Regulations 2007');*
- *The Street Works (Fixed Penalty) (England) Regulations 2007 (FPN Regulations 2007).*

The Commencement Order¹ sets out when the new requirements apply.

B.1.2 A new EToN system, based on XML web services, as set out in the technical specification for EToN, will be introduced when the 2007 Regulations come into force. This EToN program incorporates the requirements of the new regulations and will include some automatic error checking to ensure that notices comply with statutory and technical requirements before transmission. This will affect how highway authorities and statutory undertakers exchange information, but should not impact on the management of street works or the use and availability of works registers.

B.2 Principle

B.2.1 The main principle of the transitional arrangements is that:

- works which **were noticed and started** under the 1992 Regulations (*The Street Works (Registers, Notices, Directions and Designations) Regulations 1992 SI 2985*), or subsequent amendments to these regulations, will need to follow the requirements of those regulations to interim reinstatement
- some works, **noticed but not started** under the 1992 Regulations, may also follow this principle in certain circumstances
- those works notified after the Notices Regulations 2007 comes into force on 1st April 2008 must follow the new regulations.

B.2.2 The new regime simplifies and changes definitions of classes of works and associated notice periods. In particular, the advance notice period for major works (section 54 notice) changes from a minimum of one month to a minimum of three months. While it is necessary to maintain a steady flow of new starts for major works, it is equally important to minimise the time that local authorities and utility companies have to operate both the new and old regime to exchange data.

B.3 Notices of planned works (section 54 and section 55)

B.3.1 It is anticipated that the greatest difficulties will be caused by works that are currently categorised as major projects or standard works under the 1992 regulations, but as major works under the 2007 Regulations. The section 54 notice period for such works increases from one month to three months, and such works may take several months to complete, for example a mains replacement. Undertakers may wish to review their programme of works to consider whether to provide notice earlier than usual for those works scheduled to take place shortly after 1st April 2008, when the 2007 Regulations come

¹ The Traffic Management Act 2004 (Commencement No.4 And Transitional Provisions) (England) Order 2007 SI 1890(C.71)/2007

into force. This will reduce the risk of a two-month dip in the start of major works. Changes to the section 55 noticing periods for minor and standard works are less significant and less likely to impact on long-term planning by either an undertaker or local highway authority.

B.3.2 The general principles of the transitional arrangements are:

- if the works have begun before 1st April 2008, then the existing requirements, under the 1992 Regulations, apply until either a works clear notice for interim reinstatement or works closed notice for permanent reinstatement is given
- If advance notice of works (section 54 notices) has been given before 1st April 2008 with a proposed start date before 1st April, but has not started by 22nd April 2008, then the section 54 notice ceases to have effect. If it is proposed to carry out the works a fresh section 54 notice should be given
- if the works have been noticed before 1st April, but have not started, and have a proposed start date after 1st April and before 1st July, then the 1992 Regulations apply to all notices related to that phase of works - e.g. one month notice period for section 54 and seven-day notice for section 55. Subsequent phases, which have not been noticed, would need to follow the requirements of the Notices Regulation 2007
- if the works have been noticed before 1st April, but not started, and the start date is more than three months after that date (ie 1st July or later), then the notice served under the 1992 Regulations ceases to have effect. A fresh notice should be given that follows the requirements of the 2007 Regulations.

There is no change to the notice periods for emergency works. So, if works start too late for a notice to be provided on the final working day of the 1992 Regulations, the notice is deemed to have been served the next working day and so should comply with the new regulations and notification requirements. The same principle applies to urgent works.

Table B.1: Summary of transitional arrangements noticing summary	
When noticed	Consequence
S54 notice given before 1 st April 2008 and works started before 1 st April 2008.	Follow 1992 Regulations and use existing EToN system up to interim or permanent reinstatement, whichever is earlier.
S54 notice given before 1 st April 2008 with planned start date before then, but works not started by 22 nd April 2008.	S54 notice ceases to have effect and a fresh s54 notice should be given under 2007 Regulations if works are to proceed.
S54 notice given before 1 st April 2008 with start date before 30 th June	Notices under 1992 Regulations and use existing EToN system up to interim or permanent reinstatement, whichever is earlier.
S54 notice given before 1 st April 2008 with STD after 30 th June 2008 (in other words 1 st July 2008, or later)	Notice ceases to have effect and a new s54 notice should be made under new 2007 Regulations
S55 or s57 notice given before 1 st April 2008 and works started.	Follow 1992 Regulations and use existing EToN system up to interim or permanent reinstatement, whichever is earlier.
S55 given before 1 st April 2008 and works not started within 7 working days of start date.	No change; under s55(7) notice ceases to have effect.

B.4 Directions

B.4.1 Directions under the powers in s56(1A) may only be given for works where the first notice of works is given on or after 1st April 2008.

B.4.2 Directions under S56A may only be made in relation to works for which a notice is given on or after 1st April 2008, when the 2007 Regulations come into force.

B.5 Restrictions following substantial road or street works

B.5.1 The duration of a restriction following substantial road works made under the 1992 Regulations may not be longer than the 12-month period available under NRSWA before it was amended by the Traffic Management Act 2004.

B.5.2 The use of the new restriction of further street works following substantial street works may only be used in relation to works noticed on or after 1st April 2008.

B.6 Reinstatements

B.6.1 Any reinstatement completed before the new regulations come into force, should follow the requirements under the 1992 Regulations and NRSWA before amendment by the TMA. Therefore a notice of reinstatement should be provided by end of the next working day.

B.6.2 Reinstatements completed after 1st April 2008, but which were noticed before that date should comply with the 1992 Regulations and NRSWA before amendment by TMA.

B.6.3 Works that are noticed after 1st April 2008, including those to carry out a permanent reinstatement for works carried out under 1992 Regulations, should comply with the 2007 Regulations and inform the authority of the reinstatement within 10 days and provide all the information required.

B.7 EToN protocols

B.7.1 The potential risks involved in all local authorities and statutory undertakers switching to the new EToN protocols at the same time have been noted. However, this is necessary if there is to be a common electronic system for serving and receiving notices. There is no requirement to change systems for storing, using or accessing such information.

B.7.2 Some local authorities and utility companies may wish to exchange test notices as part of the beta testing of the new software and procedures. This is good practice, but it is for local authorities and utilities to negotiate and agree.

B.7.3 The existing EToN protocols should be used for notifications under 1992 Regulations, for a limited period only – see B.8

B.8 End date for existing EToN system

B.8.1 The existing system **should not be used to send or receive notices, covered by this Code four months** after the new regulations come into force. This limit has been set to minimise the time that local authorities and utility companies need to maintain and use both the existing EToN 3.0 system and EToN 4.0. Although works noticed before the date may need the EToN 3.0 to send and receive notices - such as actual start of works, works closed, or works clear - in the overwhelming majority of cases this should be necessary for a maximum of four months.

B.8.2 A small number of major works will not be completed within four months of the introduction of the new notices Regulations and the XML EToN system. The highway authority and utility company concerned will need to agree arrangements for serving and receiving notices, especially works closed or works clear notices, for such works. The options include:

- using the EToN XML system, to send and receive notices, although automatic error checking may be an issue
- agreeing to allow use of the EToN 3.0 for notices for specific works or
- agreeing to the use of manual notices (no fee) for specific works.

B.9 Street Gazetteers and Additional Street Data

B.9.1 Local highway authorities will need to review local street gazetteers before the new regulations come into force. They should ensure that existing requirements are met and identify any new information that must be included; for example, information on all streets in the area whether maintained by the local highway authority or not. This will include existing designations and restrictions.

B.9.2 Subject to the update timetable for the nationally consistent street gazetteer, it is expected that this should be completed within three months of the Notices Regulation 2007 coming into force.

B.10 Organisational data

B.10.1 Local highway authorities will need to make provision for the transfer of data from all works promoters to the new system, including section 50 licensees.

B.10.2 The new EToN system will require additional data to be included in the ODD submissions to the NSG Concessionaire.

B.11 Fixed Penalty Notices

B.11.1 Fixed Penalty Notices can be given only for offences set out in *The Street Works (Fixed Penalty) (England) Regulations 2006* (later referred to as FPN Regulations) and committed after these Regulations came into force on 12th May 2008. Any offence committed before that date will need to be dealt with at a Magistrates' Court.

B.11.2 Whether a particular case justifies giving an FPN or prosecution in the magistrates' court is a matter for each authority to decide, based on the facts of the case and its own independent legal advice. This should be borne in mind during the first three months of [Notices Regulations 2007], while the new system is embedded, and staff, both within local authorities and statutory undertakers, build experience and understanding of the new regime.

B.11.3 As set out in 11.7, the introduction of a fixed penalty notice scheme is **NOT** intended to be an additional source of income for street authorities. The street authority should therefore not expect, nor plan its expenditure, on the net proceeds from a fixed penalty scheme.

B.12 Charges for Prolonged Occupation of the Highway (section 74 charges)

B.12.1 The section 74 charges Regulation 2007 will only apply to those works noticed under the Notices Regulation 2007. Works, notified under the 1991 Regulations, which over run should have section 74 charges levied under the existing section 74 Regulations 2001. The rate is decided by when the works were noticed, not when the over run occurs.

B.13 Section 74 charges for Remedial Works

B.13.1 The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2008 introduces the principle that if remedial works under section 72 of NRSWA should overrun, the level of section 74 charges are those for the category of the original or parent works. This means that if the remedial works relating to completed major works on a category 0 road are noticed to last 3 days, but actually take 5, then the section 74 charge would be £2,500 a day for 2 days. This provides a strong incentive to ensure the permanent reinstatement is right first time

Reinstatements under section 72 of NRSWA may be identified up to three years after the original works. It is not practical for the section 74 charges for any over runs of remedial works to refer back to the works category of the 1992 Regulations, as the work categories have been simplified. Therefore, section 74 charges for remedial works that rectify failure in the reinstatement of works completed before the Notices Regulations 2007 came into force on 1st April 2008 should follow the attached conversion table in calculating section 74 charges. However, highway authorities will need to review the calculation of section 74 charges in these cases to ensure the correct rate has been applied.

Works Category 1991 Regs	Equivalent Category
Major projects	Major works
Standard	Standard
Minor	Minor
Emergency	Immediate
Urgent	Immediate
Special Urgent	Immediate