
STATUTORY INSTRUMENTS

2009 No. 303

HIGHWAYS, ENGLAND

The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009

<i>Made</i>	- - - -	<i>14th February 2009</i>
<i>Laid before Parliament</i>		<i>20th February 2009</i>
<i>Coming into force</i>	- -	<i>6th April 2009</i>

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

Citation, commencement and application

1.—(1) These Regulations may be cited as the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009 and shall come into force on the 6th April 2009.

(2) These Regulations apply to England only.

Revocation

2. Subject to regulation 4, the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2001(2) are revoked.

Interpretation

3. In these Regulations—

“the 1984 Act” means the Road Traffic Regulation Act 1984(3);

(1) 1991 c.22. Section 74 was amended by the Transport Act 2000 (c.38), sections 256 and 274, Schedule 31, Part V and by the Traffic Management Act 2004 (c.18), sections 40(4) and 52. The functions of the Secretary of State under sections 74, 97 and 104 are, so far as exercisable in relation to Wales, vested in the Welsh Ministers. Those functions were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2, Schedule 1. By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c.32), they were transferred to the Welsh Ministers.

(2) S.I. 2001/1281.

(3) 1984 c.27. Sections 1, 6 and 9 were amended by the New Roads and Street Works Act 1991 (c.22), section 168 and Schedule 8, paragraphs 17, 21 and 23 and modified by the Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992 (S.I. 1992/1217) (“the Tramcars Regulations”). Sections 1 and 6 were also amended by the Environment Act 1995 (c.25), section 120 and Schedule 22, paragraph 36. Section 1 was also amended by the Transport Act 2000, section 161 and

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

“the 1992 Regulations” means the Street Works (Registers, Notices, Directions and Designations) Regulations 1992(4);

“the 2004 Act” means the Traffic Management Act 2004(5);

“address”, in relation to a particular method for transmitting an electronic communication, means any number or address used for the purposes of such method of transmission;

“bridleway”, “footpath” and “footway” have respectively the meaning given in section 329(1) of the Highways Act 1980(6);

“day” means a working day;

“electronic communication” has the meaning given in section 15(1) of the Electronic Communications Act 2000(7);

“immediate works” means urgent works or emergency works(8);

“limited designation” means a designation in accordance with regulation 16(3) of the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007(9), for particular times or on particular dates;

“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 an undertaker, or
 - (ii) the undertaker considers,
 that an order under section 14 of the 1984 Act (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, save as provided in regulation 9(8), street works, other than immediate works or major works, the planned duration of which does not exceed three days;

“msa” means million standard axles;

“pedestrian planning order” means an order made under section 249(2) or (2A) of the Town and Country Planning Act 1990(10);

“permit” and “permit scheme” are to be construed in accordance with section 32 of the 2004 Act;

Schedule 11, paragraphs 6 and 7. Sections 6 and 9 were amended by the Local Government Act 1985 (c.51), section 8 and Schedule 5, paragraph 4 and section 9 was also amended by the Road Traffic Act 1991 (c.27), section 48 and Schedule 4, paragraph 24. Section 14 was substituted by the Road Traffic (Temporary Restrictions) Act 1991 (c.26), section 1(1) and Schedule 1 and modified by the Tramcars Regulations.

- (4) S.I. 1992/2985; as amended by S.I. 1995/990 and 2128 and 1999/1049. The 1992 Regulations were dis-applied as respects England by the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 (S.I. 2007/1951), regulation 2, subject to transitional arrangements contained in regulation 19.
- (5) 2004 c.18.
- (6) 1980 c.66.
- (7) 2000 c.7. Section 15(1) was amended by the Communications Act 2003 (c.21), section 406(1) and Schedule 17, paragraph 158.
- (8) See section 52 of the New Roads and Street Works Act 1991 (c.22) for the definition of “emergency works”.
- (9) S.I. 2007/1951.
- (10) 1990 c.8. Section 249(2) was amended, and section 249(2A) was inserted, by the Greater London Authority Act 1999 (c.29), Schedule 22, paragraph 5.

“Permit Authority” means—

- (a) a local highway authority in respect of which an order has been made under section 34(4) of the 2004 Act; or
- (b) the Secretary of State, as a highway authority or the person with responsibility for the management and control of streets in the Royal Parks, in respect of whom an order has been made under section 35(2) of that Act,

giving effect to a permit scheme;

“prescribed period” means the period prescribed by regulation 7;

“remedial works” are works carried out under section 72(3) of the 1991 Act;

“road category” means one of the road categories specified in paragraph 1.3.1 of Chapter S1 of the code of practice entitled “Specification for the Reinstatement of Openings in Highways” dated June 2002⁽¹¹⁾ and approved by the Secretary of State for Transport on 30th June 2002, as revised or re-issued from time to time;

“Royal Park” has the meaning given in section 39(1) of the 2004 Act;

“standard axle” means an axle which exerts a force of 80 kilo Newtons;

“standard works” means, save as provided in regulation 9(8), street works, other than immediate works or major works, the planned duration of which exceeds three days but does not exceed ten days;

“statutory undertaker” means a person entitled by virtue of a statutory right to carry out street works;

“the Technical Specification” means the Technical Specification for the Electronic Transfer of Notifications produced by the Department for Transport and dated December 2008, as revised or re-issued from time to time;⁽¹²⁾

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

“traffic-sensitive street” means a street designated as traffic-sensitive under section 64 of the 1991 Act;

“traffic-sensitive time”, in relation to a traffic-sensitive street, means—

- (a) the times or dates specified in the case of a limited designation; and
- (b) any time in any other case; and

“urgent works”—

- (a) means 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)—
 - (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 an undertaker in relation to an existing service; or
 - (iii) to reconnect supplies or services where an undertaker would be under a civil or criminal liability if the reconnection is delayed until after the expiry of the appropriate notice period; and
- (b) includes works which cannot reasonably be severed from such works.

⁽¹¹⁾ ISBN 0-11-552538-6.

⁽¹²⁾ This is available at www.dft.gov.uk

Transitional arrangements

4. These Regulations do not apply to street works in England in respect of which an undertaker has given notice under section 54(1), 55(1) or 57 of the 1991 Act before the date on which they come into force and the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2001 shall continue to have effect in relation to those works as if they had not been revoked.

Application of Regulations

5. These Regulations apply to every maintainable highway, 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) Subject to paragraph (2), an undertaker executing street works in a highway to which these Regulations apply shall give the highway authority for that highway notice in writing 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 next day following the date on which the works begin.

(2) Where works are executed under a permit granted by a Permit Authority in a traffic-sensitive street or in a street in road category 0, 1 or 2 which is not a traffic-sensitive street, the period within which the actual start of works notice must be given in accordance with paragraph (1) shall be the period applicable by virtue of paragraph 16.7 of the Code of Practice for Permits dated March 2008⁽¹³⁾, as revised or re-issued from time to time.

(3) When an undertaker has—

- (a) completed interim reinstatement of a highway;
- (b) removed—
 - (i) all signing, lighting and guarding, and
 - (ii) all remaining spoil, unused materials and other plant; and
- (c) returned the highway fully to public use,

that undertaker shall give the highway authority notice that this has been done (“works clear notice”) not later than the end of the next day following the date on which the highway was returned fully to public use.

(4) When an undertaker has—

- (a) completed permanent reinstatement of a highway;
- (b) removed—
 - (i) all signing, lighting and guarding, and
 - (ii) all remaining spoil, unused materials and other plant; and
- (c) returned the highway fully to public use,

that undertaker shall give the highway authority notice that this has been done (“works closed notice”) not later than the end of the next day following the date on which the highway was returned fully to public use.

⁽¹³⁾ The Code is available from www.dft.gov.uk.

Prescribed period

7. In relation to an undertaker executing street works in a highway to which these Regulations apply, the period prescribed under section 74(1)(a) of the 1991 Act shall be two days, starting on the date on which the works begin.

Duration of works

8. For the purposes of these Regulations, the duration of street works will only come to an end when the undertaker has—

- (a) completed interim reinstatement, or as the case may be permanent reinstatement, of a highway;
- (b) removed—
 - (i) all signing, lighting and guarding, and
 - (ii) all remaining spoil, unused materials and other plant; and
- (c) returned the highway fully to public use.

Prescribed charges

9.—(1) Subject to paragraphs (2), (12) and (13), an undertaker executing street works in a highway to which these Regulations apply shall pay the highway authority a charge to be determined in accordance with paragraphs (3) to (11).

(2) Paragraph (1) shall not apply to—

- (a) works—
 - (i) in a street which is not a traffic-sensitive street,
 - (ii) in the footway of a traffic-sensitive street at a traffic-sensitive time, or
 - (iii) in a traffic-sensitive street, other than at a traffic-sensitive time,if the works do not involve breaking up the street or tunnelling or boring under it;
- (b) works consisting only of the creation of holes of less than 3 centimetres in diameter, for investigatory purposes;
- (c) replacing poles, lamp columns or signs in the same location; or
- (d) pole testing.

(3) Subject to paragraphs (5) and (9), the charge shall be of an amount calculated in accordance with paragraph (4) and shall be payable for each day, or part of a day, by which the duration of the works exceeds the longer of—

- (a) the prescribed period, or
- (b) a reasonable period⁽¹⁴⁾.

(4) In relation to street works of a category set out in column (3) of Table 1, executed in a street of a description referred to in column 2 in relation to that category, the amount of the charge shall be the amount set out in column 4.

(14) “A reasonable period” is to be construed in accordance with section 74(2) of the New Roads and Street Works Act 1991 (c.22).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Table 1

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

(5) Subject to paragraphs (7) and (9), the charge in relation to remedial works will be calculated as if those works were street works of the same category as the works set out in paragraph (6).

(6) The works referred to in paragraph (5) are those works in respect of which—

- (a) there has been a failure to comply with the undertaker's duties with respect to reinstatement; and
- (b) the street authority has required the undertaker to carry out the remedial works.

(7) Where the works referred to in paragraph (6) were, at the time notice was given in respect of them under section 54(1), 55(1) or 57 of the 1991 Act, works which fell into one of the categories set out in column 2 of Table 2 for the purposes of the 1992 Regulations, those works shall be treated, for the purposes of paragraph (5), as if they were in the equivalent category set out in column 3 in relation to that category.

Table 2

<i>1.</i>	<i>2.</i>	<i>3.</i>
<i>Item No.</i>	<i>Category of street works for the purposes of the 1992 Regulations.</i>	<i>Equivalent category of street works.</i>
1.	Major projects	Major works
2.	Standard works	Standard works
3.	Minor works	Minor works
4.	Urgent works	Immediate works
5.	Emergency works	Immediate works

(8) In paragraph (7), the expressions used in items 1 to 4 in column 2 of Table 2 have the meaning given in regulation 2 of the 1992 Regulations.

(9) The charge will consist of a single payment of £100 in respect of any works in the circumstances set out in paragraph (10), if the requirements of paragraph (11) are met.

(10) The circumstances referred to in paragraph (9) are that—

- (a) subject to sub-paragraph (c), the undertaker has—
 - (i) completed interim reinstatement, or as the case may be permanent reinstatement, of a highway,
 - (ii) endeavoured to remove all signing, lighting and guarding, and
 - (iii) removed all remaining spoil, unused materials and other plant;
- (b) but for paragraph (c), the duration of the works would not have exceeded the longer of the prescribed period or a reasonable period; and
- (c) a single item of signing, lighting or guarding remains on the highway.

(11) The requirements referred to in paragraph (9) are that—

- (a) the highway authority has—
 - (i) informed the undertaker of the identity and location of the single item referred to in paragraph (10)(c); and
 - (ii) requested the undertaker to remove it; and
- (b) the undertaker has complied with the request by the end of the next day following the date on which the request was received.

(12) A highway authority may reduce the amount, or waive payment, of a charge—

- (a) in any particular case,
- (b) in such classes of case as they may decide,
- (c) in all cases,
- (d) in all cases other than a particular case, or
- (e) in all cases other than such class of case as they may decide.

(13) Charges are only payable in respect of street works where the highway authority has 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 charges payable.

Estimates of duration of works

10.—(1) Subject to paragraph (5), if an undertaker has reason to believe that the duration of the works will exceed the prescribed period, that undertaker shall give 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 the application for the licence;
- (b) in the case of works (not being emergency works) together with—
 - (i) the notice under section 55 of the 1991 Act (notice of starting date), or
 - (ii) the notification under paragraph 2(1)(d) of Schedule 3A to that Act (notification of proposed works)**(15)**; 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 reasonable unless they give written notice to the undertaker, within the relevant period set out in paragraph (3), that they object to the estimate.

(3) The relevant period referred to in paragraph (2) is—

- (a) 5 days, in the case of major or standard works, and
- (b) 2 days, in the case of minor or immediate works,

beginning with the date on which the authority receives the notice containing the estimate.

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

(5) This regulation shall not apply where an undertaker proposes to carry out street works in respect of which a permit must be obtained from a Permit Authority.

Further and revised estimates of duration of works

11.—(1) Subject to paragraph (4), if it appears to an undertaker that, by reason of matters not previously foreseen or reasonably foreseeable, the duration of the works is likely to exceed—

- (a) the prescribed period,
- (b) the period stated in that undertaker's previous estimate, or
- (c) the period previously agreed or determined under section 74(2) of the 1991 Act to be a reasonable period,

the undertaker shall give the highway authority written notice containing an estimate or revised estimate.

(2) Where notice is given 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 they give written notice to the undertaker, within the period set out in paragraph (3), that they object to the estimate.

(3) The period referred to in paragraph (2) shall be 2 days beginning with the date on which the authority received the notice containing the estimate or revised estimate.

(4) This regulation shall not apply where a permit to carry out proposed street works has been granted by a Permit Authority.

(15) 1991 c.22. Schedule 3A was inserted by the Traffic Management Act 2004 (c.18), section 52(2).

Application of charges and keeping of accounts

12.—(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.

Offence

13. 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.

Form of notice

14.—(1) Any notice required by these Regulations shall be in, or to the like effect as, the form contained in the Technical Specification.

(2) A notice shall also include such other information as may be required by the Technical 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

15.—(1) Subject to paragraphs (2), (5) and (7), where an undertaker is required to give notice to a highway authority in accordance with regulation 6, such notice shall be given by—

- (a) sending it to the highway authority at its proper address by using an electronic communication in accordance with the condition set out in paragraph (4);
- (b) delivering it to that authority at that address; or
- (c) any other means agreed between the undertaker and the authority.

(2) Where a highway authority to whom an undertaker is obliged to give such notice does not have arrangements for receiving and responding to notices for any period after 4.30 pm and before 8.00 am the following day, the undertaker shall have complied with that obligation if a notice is served by 10.00 am on that following day.

(3) Subject to paragraphs (5) and (7), in any other case where a person is required to give a notice under these Regulations, such notice shall be given by—

- (a) sending it to the person to whom it is to be given at that person's proper address by using an electronic communication in accordance with the condition set out in paragraph (4);
- (b) sending it by first class post to that person at that address;
- (c) delivering it to that person;
- (d) leaving it at that person's proper address; or
- (e) any other means agreed between the person giving it and the person to whom it is to be given.

(4) The condition referred to in paragraphs (1)(a) and (3)(a) is that the notice shall be—

- (a) capable of being accessed by the person to whom it is being sent;
- (b) legible in all material respects; and
- (c) in a form which permits the notice to be retained 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 a notice in printed form.

(5) Subject to paragraph (7), from and including 1st April 2009 all notices required to be given under these Regulations by a highway authority or a statutory undertaker shall be exchanged between one highway authority and another, one statutory undertaker and another and between a highway authority and a statutory undertaker by using electronic communications in accordance with the condition set out in paragraph (4).

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

(7) Where, after three attempts (duly recorded by the person serving the notice) to effect service by using one particular method for transmitting an electronic communication, service cannot be effected, the notice may be given by serving it upon the person to whom it is to be given by any other such method for which there is a proper address, or by any of the other means referred to in paragraph (1) or, as the case may be, paragraph (3).

(8) Subject to paragraph (9), for the purposes of this regulation, the proper address of any person to whom notice is to be given shall be—

- (a) where such person—
 - (i) has provided the person giving the notice with an address for service of notices under these Regulations by using a particular method for transmitting an electronic communication; and
 - (ii) has not notified the latter that the address is withdrawn for that purpose, that address in relation to that method of transmission;
- (b) where such person has provided the person giving the notice with an address for postal service of such notices, that address in relation to postal service;
- (c) where such person has provided the person giving the notice with an address for service of such notices by any other means, that address in relation to such other means; and
- (d) otherwise—
 - (i) in the case of a body corporate, the registered or principal office of that body corporate; and
 - (ii) in any other case, the last known address of such person.

(9) A person may provide different addresses for different notices or different classes of notice.

Signed by authority of the Secretary of State for Transport

14th February 2009

Paul Clark
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2001 (“the 2001 Regulations”). They provide for the payment of charges to highway authorities where certain street works, executed by undertakers in maintainable highways, are unreasonably prolonged.

Regulation 2 revokes the 2001 Regulations subject to *regulation 4* which continues to apply them to street works in England in respect of which notice was given under section 54(1), 55(1) or 57 of the New Roads and Street Works Act 1991 (“the 1991 Act”) before this instrument came into force.

Regulation 6(1) and (2) require an undertaker, executing street works in a highway to which these Regulations apply by virtue of *regulation 5*, to give an “actual start of works notice” within the periods set out. *Regulation 6(3) and (4)* specify the period within which a “works clear notice” must be given following the completion of an interim reinstatement of the highway and within which a “works closed notice” must be given following permanent reinstatement.

Regulation 7 establishes the “prescribed period” for the purposes of section 74(1)(a) of the 1991 Act and *regulation 8* specifies when works end for the purpose of calculating any overrun charges.

Regulation 9 prescribes the charges payable where the duration of street works exceeds the longer of the prescribed period or a reasonable period, subject to certain exemptions. Different daily rates will apply depending upon the category of street works and the type of street in which they are carried out. Where remedial works are carried out, any overrun will be charged as if those works were in the same category as the works being remedied. For this purpose, provision is made for treating older works as being within contemporary categories of street works. Where the duration of works would not have overrun but for the presence of a single item of signing, lighting or guarding, the charge will consist of a single payment of £100 provided the undertaker removes it within the specified time limit following the highway authority’s request to do so. Provision is made for the reduction or waiver of a charge in various cases.

Regulations 10 and 11, which do not apply where a permit to carry out street works is required, enable an undertaker to provide the highway authority, in certain circumstances, with an estimate or revised estimate of the duration of works, which may be taken to be agreed as a reasonable period in the absence of an objection by the highway authority concerned.

Regulation 12 provides for the application of charges and the keeping of accounts. *Regulation 13* creates an offence of failing to give any notice required by the Regulations.

Regulations 14 and 15 prescribe the form of any notice and the manner in which it must be served.

An impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from the Department for Transport, zone 2/08, Great Minster House, 76 Marsham Street, London SW1P 4DR (Tel: 020 7944 8046) and is annexed to the Explanatory Memorandum which is available alongside the instrument on the OPSI website. Both the Explanatory Memorandum and the assessment may also be found by visiting the Department’s website at www.dft.gov.uk.