

**EXPLANATORY MEMORANDUM TO
THE STREET WORKS (INSPECTION FEES) (ENGLAND) (AMENDMENT)
REGULATIONS 2009**

2009 No. 104

1. This explanatory memorandum has been prepared by the Department for Transport ("DfT") and is laid before Parliament by Command of Her Majesty.

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. **Purpose of the instrument**

- 2.1 These Regulations increase the fee charged by street authorities, from £25 to £50, for the inspection of works carried out by undertakers (e.g. gas, water, electricity and telecommunication companies) in or under a street.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

- 3.1 The current fee of £25 was set in April 2008 by the Street Works (Inspection Fees) (England) (Amendment) Regulations 2008 (SI 2008/589). The increase to £50 represents an increase of 100 per cent.
- 3.2 The Highway Authorises and Utilities Committee (HAUC(UK)) is a body that assists the Secretary of State in arriving at proposals for new street works legislation. It is made up of representatives from local highway authorities and the National Joint Utility Group, which represents undertakers that are utility companies.
- 3.3 In the winter of 2007/8 (after the April 2008 figure had been set) the HAUC(UK) Fees Working Group (representatives from utilities, highway authorities, and DfT), considered the fee charged for carrying out an inspection. As part of the Street Group's consideration a comprehensive study of all the cost elements included in the inspection fee was undertaken. It was found that the current fee was substantially less than the costs involved in carrying out inspections. One factor not taken fully into account in the fee is the increase in average time taken to carry out an inspection to 46.5 minutes from 32. (The last survey was done in 2004 and the increase was a result of better understanding of inspections and increased travelling time). A further factor is that previously only corporate overheads (i.e. central services and accommodation costs) had been included in the multiplier - local administration and management costs had not been included.

- 3.4 Therefore while this is a substantial increase to the current fee we are of the view that the fee will only cover the cost of carrying out the inspection and not provide a surplus. If this is not done local authorities will have to cover these costs themselves, going against the policy objective of random sample inspections being revenue neutral for authorities.
- 3.5 The new fee of £50 was calculated using the same formula as previously used but including those local costs not previously included (please see Annex A of this memorandum for further numerical detail).
- 3.6 HAUC(UK) endorsed the steering group findings and wrote in August 2008 asking that the existing regulations be amended to set a new fee of £50 with effect from 1 April 2009.
- 3.7 Each year payroll costs are updated to take account of increases in pay and employer contributions. Since April 2004, when a fee of £21 was levied, costs have increased by an average of 4.5% per year resulting in the current fee of £25. The fee will be reviewed annually to take account pay and employer contribution increases.

4. Legislative Context

- 4.1. Part III of the New Roads and Street Works Act 1991 (NRSWA) makes provision in relation to street works carried out in England and Wales. In this context 'street works' means certain works (for example, placing, repairing, altering or renewing apparatus) executed in a street under either a statutory right or a street works licence. In relation to such works an 'undertaker' means the person exercising the statutory right or the licensee under a street works licence (e.g. gas, water, electricity and telecommunication companies).
- 4.2. Section 75 of NRSWA sets out the legislative framework covering the inspection by street authorities of individual street works which undertakers carry out in the street (for instance to install new apparatus or to maintain existing apparatus) so as to ensure that they meet the relevant national standards, e.g. safety to pedestrians and road users by proper signing, lighting and guarding of street works; works are carried out in accordance with excavation and reinstatement specifications. As a result there should be:
- a reduction in the risk of accidents, both pedestrian and traffic;
 - less disruption to all road users, public transport, private vehicles, and business, resulting in less congestion and hence minimising delay caused by street works;
 - less pollution caused through less congestion; and
 - less inconvenience to pedestrians.
- 4.3. Section 75(1) provides that an undertaker, subject to any provisions of any scheme under this section, pays a prescribed fee to the street

authority for each inspection of the works carried out by the authority. Regulations under Section 75(3) may establish a scheme under which undertakers pay the prescribed fee only in respect of such proportion or number of excavations or other works as is determined under the scheme.

- 4.4. The Street Works (Inspection Fees) (England) Regulations 2002 (SI 2002/2092) established a scheme in relation to England which provided that undertakers pay a fee to a street authority for each random inspection. A fee can only be charged up to a set maximum percentage of works carried out by each undertaker in a given year (currently not more than 30%).
- 4.5. These amending Regulations increases the current inspection fee to £50 meet the cost of carrying out the inspection.

5. Territorial Extent and Application

- 5.1 This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- 7.1 See paragraph 3.
- 7.2 The inspection fee only covers the cost incurred by street authorities in carrying out the set percentage sample of random inspections of undertakers' works. The fee is not a source of revenue for the authorities but allows them to recover their costs in carrying out the inspections.
- 7.3 There are approximately 1.4 million street works carried out each year, and therefore approximately 420,800 chargeable inspections. To not increase the fee to meet the cost of carrying out these inspections would mean that authorities would have to meet this cost.
- 7.4 We consider there is little public interest in the inspection fee itself but the Department deems the public have quite high interest in the standard of street works carried out which this regulation supports.

8. Consultation outcome

- 8.1 No public consultation has taken place on the fee increase. As described above in paragraph 3.3 HAUC(UK) who advise the Department for Transport on street works policy have undertaken a

survey with highway authorities to ascertain the costs of carrying out inspections. The fee increase has been agreed by HAUC(UK) which is made up of the two groups of organisations who are affected by the increase.

9. Guidance

- 9.1 The Department for Transport will write to the co-chairs of HAUC(UK) to inform them when fee increase has become law. They will in turn inform all the members of HAUC(UK).

10. Impact

- 10.1 The impact on business is £10.5 million across all undertakers.
- 10.2 The impact on the public sector is zero.
- 10.3 An Impact Assessment has not been produced for this statutory instrument as the fee has been increased using a formula which has been agreed by HAUC(UK). Therefore statutory undertakers should have taken this into account when conducting their business planning.
- 10.4 The fee increase does not count as an impact as defined by the relevant guidance and no impact assessment is needed as it has been recommended to government by the industry involved. However, data on the cost of this fee increase has been provided for information.
- 10.5 Undertakers already have to meet the cost of the random sample of inspections under the current regulatory regime; the only additional cost is the increase in the fee. The Department has gathered data from local authorities in winter of 2007/08 which indicated that there were approximately 1.4 million units of inspections of work carried out, in England, by undertakers every year. Based on this data 30% of this represents approximately 420,800 inspections a year. Given this, we could expect an increase of the inspection fee by £25 to cost an additional amount of approximately £10.5 million across all undertakers.
- 10.6 The new fee was calculated using the formula as detailed in paragraph 3.3 of this memorandum and is attached at annex A.

11. Regulating small business

- 11.1 Although the legislation does equally apply to small business in practice virtually all the street works that are carried out are instigated by large utility firms. Therefore the Department has not purposed mitigating measures for small business as in practice they are not directly affected.

11.2 To minimise the impact of the requirements on firms employing up to 20 people, the approach taken is to have consulted extensively with HAUC (UK).

11.3 The basis for the final decision on what action to take to assist small business has been that the fee increase has been agreed by industry representatives and allows highway authorities to recover the costs of that percentage of inspections it is entitled to charge for.

12. Monitoring & review

12.1 The department would consider this legislation to be a success if it is considered by highway authorities that the inspection fee meets the cost of carrying out an inspection. This will be monitored by the annual review of the inspection fee undertaken by HAUC(UK).

13. Contact

Elizabeth Godden at the Department for Transport, Traffic Management Division. Tel: 020 7944 3624 or e-mail: elizabeth.godden@dft.gsi.gov.uk can answer any queries regarding the instrument.

Inspection Fee Formula

Annex A

NRSWA Inspection Fees

	Current fee	Proposed fee	Per centage change		Increase in cost per inspection	
					£	£
Current Random Sample Inspection Fee as at 1 April 2008						25.00
Increase in Inspector's payroll costs	£30,601	£33,289	8.8%			
Reduction in effective working hours -	1,498	1,386	-7.5%	hours		
Increase in Inspector's effective hourly rate	£20.43	£24.02	17.6%		2.47	
Increase in multiplier to include management and admin time	2.13	2.47	16.0%		8.41	
Increase in miles travelled in an hour (at 40p per mile)	8.11	12.4	52.9%		1.18	
Increase inspectors time to carry out a sample inspection	32.0	46.5	45.3%	minutes	12.75	24.81
Calculated Fees	24.94	49.81				49.81
Requested Fee to be effective from 1 April 2009 (rounded to the nearest 50p)						£50.00

Formula used

$$\text{Cost per inspection} = \left[\frac{\text{Inspectors Payroll Cost (incl. NI \& Superannuation)}}{\text{Annual effective hours}} \times \text{On-cost multiplier} + \text{Hourly travelling costs} \right] \times \text{Inspection time (hours)}$$

$$\text{Cost per inspection} = \left[\frac{33289}{1386} \times 2.47 + 4.95 \right] \times 0.775$$