

EXPLANATORY MEMORANDUM TO
THE STREET WORKS (CHARGES FOR UNREASONABLY PROLONGED
OCCUPATION OF THE HIGHWAY) (ENGLAND) REGULATIONS 2009

2009 No. 303

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

2. Purpose of the instrument

2.1 These Regulations ("the 2009 Regulations") provide highway authorities with the power to impose charges on undertakers where street works overrun the longer of the agreed or prescribed period, thereby potentially reducing the number of occasions where such works overrun.

2.2 The Street Works (Charges for the Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2001 ("the 2001 Regulations") were made by virtue of the power in section 74 of the New Roads and Street Works Act 1991 ("the 1991 Act") and are revoked by these Regulations.

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

3.1 None.

4. Legislative Context

4.1 Part III of the 1991 Act makes provision for street works carried out in England and Wales. Since devolution, these powers have been exercised, with respect to Wales, by the Welsh Assembly Government.

4.2 In Part III, "street works" means works executed by an undertaker to lay, maintain, repair etc apparatus in a street under either a statutory right or a street works licence, as well as works required for or incidental to such works. Undertakers are mainly utility companies, but can be persons granted a street works licence to carry out street works. Part III imposes duties on highway authorities and undertakers in relation to the noticing, execution and coordination of street works, and to the carrying out of such works to a satisfactory standard.

4.3 Section 74 of the 1991 Act provides a power for Regulations to be made to permit highway authorities to impose a charge ("overrun charges") on undertakers, where the duration of street works extends beyond either a period agreed between the parties as reasonable, or that prescribed in Regulations made under section 74.

4.4 Section 74 has been amended by the Transport Act 2000 ("the 2000 Act") which extended the scope of Regulations made under section 74. Regulations may now include the power to allow highway authorities to prescribe more than one rate of

charge in respect of the same description of works and to prescribe exemptions from any requirement to pay charges or to waive or reduce them.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

7.1 Works in the highway affect all road users by causing delays or congestion. The 2009 Regulations support the Government's objective to *"to sustain economic growth and improved productivity through reliable and efficient transport networks."* More information can be found on the Department's website: <http://www.dft.gov.uk/about/aimsandobjectives>.

7.2 Since the 1991 Act came into force, there has been a marked increase in the number of statutory undertakers and consequently the number of street works carried out each year. There are now some 200 utility companies, who have the statutory right to place and maintain apparatus in the highway. Consultant's acting for the Department estimate there are approximately 1.2 million sets of street works carried out each year and this costs the economy approximately £4.2 billion (2002 prices).

7.4 The introduction of the 2001 Regulations resulted in a reduction in the number of overrunning works and the amount of time where a site is occupied but no work is taking place.

7.5 The Department's consultants monitored how effective the 2001 Regulations had been in reducing the extent to which works overran. They reported street works still took longer than the agreed duration, despite the 2001 Regulations.

7.6 Following a judgment by the Court of Appeal in 2003, there was some confusion amongst both highway authorities and undertakers over the application of the section 74 charging regime. Consequently, taking into account the consultant's report, the judgement of the Court of Appeal and representations from relevant bodies, a decision was taken by the Department to prepare fresh Regulations.

7.7 The policy and detailed changes have been developed in association with HAUC(UK) ("the Working Group") - 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 undertakers.

8. Consultation outcome

8.1 The proposals have been subject to three rounds of consultation. The first took place in February 2005 and ended in April 2005. Some 500 bodies were invited

to comment, including all English and Welsh highway authorities, undertakers and various other representative organisations. Questions focussed on the types of activities to which charges should apply. Questions included whether category 3 and 4 non traffic-sensitive roads should be exempt completely. On this and other such questions there was a clear division between highway authorities and utilities. The consultation responses were analysed by the Working Group and it was decided that a second consultation would be needed. The consultation report can be found at: <http://www.dft.gov.uk/consultations/archive/2005/tma/>

8.2 A second 6 week consultation began in October 2006 with a similar number of organisations involved. The questions included proposals to reduce the prescribed period from 3 to 2 days to which there was no overall consensus. Another question was whether works noticed under the old Regulations should continue to be charged under those Regulations. To this there was a broad agreement to the principle, though many responses mentioned such circumstances should not continue indefinitely. Overall, stakeholders failed to reach agreement on the proposed changes. A significant concern emerged amongst undertakers that they may be treated unfairly when works were completed and cleared on time and small amounts of material were left in error. In several cases, local authorities were levying full overrun charges, although these situations caused minimal or no disruption. The Working Group sought to address that concern by proposing the concept of the mitigated charge to acknowledge circumstances where an undertaker completes the works within the agreed period, but mistakenly leaves behind on site a small amount of signing, lighting or guarding. The consultation report can be found at: <http://www.dft.gov.uk/consultations/archive/2006/keepingtrafficmovingfollowup/>

8.3 A third and final consultation, dealing with the mitigated charge, was launched in October 2007 and ran for 4 weeks. Invitations were sent to about 700 stakeholders, including those who responded to the two previous consultations. Responses were received from a cross section of organisations. The consultation asked three questions dealing with the level of section 74 charges, the principle of a mitigated charge and the amount of the mitigated charge. The consultation report can be found at: <http://www.dft.gov.uk/consultations/archive/2007/streetworks/>

8.4 In association with the Working Group, and in response to the three consultations outlined above, the Department decided on the following main changes to the 2001 Regulations:

- a) The prescribed period would be reduced from 3 working days to 2 working days, (this is the period stated in the 2001 and 2009 Regulations as the period within which an undertaker must complete street works, unless another period has been agreed);
- b) Works categories would be amended to reflect changes in the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007;
- c) Daily charges would be increased and would be more closely related to the complexity of work and the level of impact the works have on traffic;

d) A mitigated charge of £100 would be introduced to deal with situations where single items of signing, lighting or guarding had been left in error. Regulation 9(9) provides for a mitigated charge which operates as follows: when works are completed on time, noticed as clear or closed and free flow of traffic is re-established on the highway, an undertaker will be subject to a nominal one-off charge of £100 should they leave a single item of signing, lighting or guarding in error, assuming that they remove the item by the end of the following day after having been informed by the highway authority. If the undertaker fails to remove the article in question by the end of the following day, they will be liable for the full overrun charges. This proposal was to acknowledge the concerns expressed by undertakers that full overrun charges were being applied where only small amounts of material remained. The Department's policy decision following consultation on the mitigated charge was to restrict it to a single item following concerns from highway authorities that undertakers may be able to store quantities of material on the highway. It was restricted to signing, lighting or guarding after highway authorities argued that if undertakers were able to leave spoil or plant on the highway in error such items were more likely to stop the free flow of traffic.

8.5 It was concluded that certain works, e.g. the creation of certain small diameter holes in the road, which involved either minimal or no excavation would be exempted from the overrun charging scheme.

8.6 Daily overrun charges will range from £2,500 for the busiest roads to £100 for the quietest roads. This allows the most significant works to be targeted in an attempt to reflect the cost of the disruption caused by overrunning works more closely than those in the 2001 section 74 Regulations.

9. Guidance

9.1 Chapter 10 of the New Roads and Street Works Act 1991, Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters provides guidance as to the operation of a section 74 charging scheme.

10. Impact

10.1 The impact on business will fall on statutory undertakers who will need to plan works more effectively. They will have to pay overrun charges when the local highway authority deems necessary in cases of street works taking longer than the agreed forecast. The charges are avoidable.

10.2 The impact on the public sector will be the costs of running/enforcing the overrun charging schemes, this falls on local highway authorities. Monies gained from section 74 charges are intended to offset these operating costs, with any excess used to promote local transport schemes. It is not compulsory to run a section 74 scheme.

10.3 An impact assessment is attached to this memorandum.

11. Regulating small business

11.1 The impact on small business is limited as the changes being introduced will predominantly affect local and national highway authorities and utilities (i.e. water, gas, electricity and telecommunications companies). The charges are only for overrunning works and therefore are avoidable.

12. Monitoring & review

12.1 The Department intends to review the effectiveness of the 2009 Regulations, along with other Regulations introduced as a result of the Traffic Management Act 2004 in 2010.

13. Contact

Ellen Duffy at the Department for Transport, Traffic Management Division Tel: 020 7944 8046 or e-mail: ellen.duffy@dft.gsi.gov.uk can answer any queries regarding the instrument.

Summary: Intervention & Options

Department /Agency: Department for Transport	Title: Impact Assessment of the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009	
Stage: Final	Version: 1	Date: January 2009
Related Publications:		

Available to view or download at:

<http://www.dft.gsi.gov.uk>

Contact for enquiries: Alistair Cormack

Telephone: 020 7944 2485

What is the problem under consideration? Why is government intervention necessary?

The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2001 ("the 2001 Regulations") need to be replaced as:

- A Court of Appeal judgment in 2003 created uncertainty in the application of section 74 charges thereby undermining the scheme.
- A review in 2004 showed street works continue to overrun (eg by over 650,000 days between April 2003 and March 2004) and more improvements can be made.

What are the policy objectives and the intended effects?

Policy Objective:

- To reduce the number of occasions where utility works in the street take longer than the agreed forecast.

Intended effects:

- Reduce the inconvenience and disruption of street works; overrun charges provide an incentive to minimise their occurrence.

What policy options have been considered? Please justify any preferred option.

1) Continue to use existing regulations. This is not a viable option given uncertainty created by the above judgement.

2) Replace the existing regulations in their entirety to prevent any further uncertainty and create a more effective over-run charging regime.

Option 2 is measured against the baseline of option 1.

When will the policy be reviewed to establish the actual costs and benefits and the achievement of the desired effects? 04/2010

Ministerial Sign-off For final proposal/implementation stage Impact Assessments:

I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options

Signed by the responsible Minister:

Paul ClarkDate: 14th February 2009

Summary: Analysis & Evidence

Policy Option: 2	Description: Replace existing regulations in their entirety to prevent any further uncertainty and create more effective over-run charging schemes
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COSTS	ANNUAL COSTS		Description and scale of key monetised costs by 'main affected groups' Costs will fall on undertakers who will need to plan works more effectively (employ extra planners) at a cost of £29m/year; this cost will be absorbed into 'business as usual' over 5 years. They will also have to pay over-run charges when necessary (this liability cannot be accurately predicted, but estimates can be made).
	One-off (Transition)	Yrs	
	£ n/a	0	
	Average Annual Cost (excluding one-off)		
£ 4.35m		Total Cost (PV) £ 83.2m	
Other key non-monetised costs by 'main affected groups' Costs of running / enforcing the over-run charging schemes fall on the Highway Authorities. Monies gained from section 74 charges are intended to offset these operating costs, with any excess used to promote local transport schemes. Undertakers will be liable for charges where delays still occur.			

BENEFITS	ANNUAL BENEFITS		Description and scale of key monetised benefits by 'main affected groups' Reducing the number of streetworks that over-run will reduce traffic congestion. This will have a positive impact on the general economy (over £56m/year).
	One-off	Yrs	
	£ n/a	0	
	Average Annual Benefit (excluding one-off)		
£ 56.1m		Total Benefit (PV) £ 825.2m	
Other key non-monetised benefits by 'main affected groups' Reducing the level of congestion caused by street works will have a positive effect on local air and noise quality. Highway Authorities will receive monies from charges where delays still occur, although the extent of this effect will depend upon whether the charges deliver the desired response from undertakers.			

Key Assumptions/Sensitivities/Risks Data have been calculated assuming that all Highway Authorities will apply an over-run charging regime and enforce it fully.

Price Base Year 2007	Time Period Years 20	Net Benefit Range (NPV) £	NET BENEFIT (NPV Best estimate) £ 742m
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What is the geographic coverage of the policy/option?	England			
On what date will the policy be implemented?	[TBA] 2008			
Which organisation(s) will enforce the policy?	Highway Authorities			
What is the total annual cost of enforcement for these organisations?	£ negligible			
Does enforcement comply with Hampton principles?	Yes			
Will implementation go beyond minimum EU requirements?	No			
What is the value of the proposed offsetting measure per year?	£ n/a			
What is the value of changes in greenhouse gas emissions?	£ negligible			
Will the proposal have a significant impact on competition?	No			
Annual cost (£-£) per organisation (excluding one-off)	Micro	Small	Medium	Large
Are any of these organisations exempt?	No	No	N/A	N/A

Impact on Admin Burdens Baseline (2005 Prices)		(Increase - Decrease)	
Increase of £ 0	Decrease of £ 0	Net Impact	£ 0

Key: Annual costs and benefits: (Net) Present

Evidence Base (for summary sheets)

[Use this space (with a recommended maximum of 30 pages) to set out the evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Ensure that the information is organised in such a way as to explain clearly the summary information on the preceding pages of this form.]

Objective

1. *The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009* (“the 2009 Regulations”), along with those for *Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007* (“the Notices Regulations 2007”), are a key element in the Government’s strategy to tackle congestion through better use of the existing network, especially those elements that are to be delivered by the Traffic Management Act 2004. The objective of the 2001 and 2009 Regulations is to help reduce the number of occasions where street works in the highway take longer than is necessary. This should reduce the inconvenience and disruption of street works, as overrun charges provide an incentive to minimise their occurrence.
2. The Department wishes to replace the 2001 Regulations as street works continue to overrun and the Court of Appeal has created uncertainty in the application of the section 74 regime.
3. The provisions of the 2009 Regulations will help focus resources on the busier roads that carry significant volumes of traffic in order to minimise overall traffic disruption

Background

4. Works in the highway by statutory undertakers can limit the amount of road space available to traffic leading to congestion and disruption. Some of the resulting disruption is inevitable, given the need to carry out the works. This disruption could be minimised by ensuring that works take no longer than necessary to do the works.
5. The existing legislative framework for utility street works, the New Roads and Street Works Act 1991 (“NRSWA”), sets out the broad powers and responsibilities which undertakers and local authorities have in relation to utilities’ works. Section 74 of NRSWA, as amended by the Transport Act 2000, provides for Regulations to be introduced which would allow a highway authority to levy a charge on an undertaker if they take longer than the date agreed with the highway authority to complete street works, or a period prescribed by regulations. The 2001 Regulations came into force on 1 April 2001. Not all local highway authorities have exercised the power to make charges for unreasonably prolonged occupation of the highway under section 74.
6. Under these Regulations, an undertaker proposing to carry out works in a particular street (eg Severn Trent Water) that are longer than 2 days must agree with the highway authority (eg Shropshire County Council) for that street how long the works are projected to take (the agreed period), if those works are expected to last longer than the period prescribed by the Regulations. If they exceed the longer of the agreed period, or the period prescribed by Regulations, the undertaker is penalised by having to pay a charge. For instance, if it were agreed that the works should take six days and they actually took eight, the utility would have to pay the daily charge for two days. The prescribed period under the new Regulations is 2 days.
7. Section 74 allows charges to be levied on undertakers and the power does not extend to works carried out by highway authorities. It is not compulsory to operate an overrun charging scheme. In the 2007 consultation, responses were received from 88 local highway authorities in England. Of these, 82 (93%) currently operate an overrun charging scheme.
8. The daily charges set out in the 2001 Regulations are set out in Table 1 below.

Table 1: Daily charges as set out in the 2001 Regulations

Type of works	Road category 0, 1 or 2	Road category 3 or 4
Minor, emergency & urgent works	£500	£100
All other works	£2,000	£250

As defined in the Street Works (Registers, Notices, Directions and Designations) Regulations 1992

Minor works are works which are planned to last 3 or fewer days or which take up less than 30m of road at any one time or which do not leave less than a certain width of carriageway (3 or 2½ metres according to circumstances) available for traffic.

Emergency works are works needed to prevent or put an end to circumstances which could cause danger to persons or property (eg to deal with a gas leak).

Urgent works are broadly works which are not emergencies, but which are needed to prevent or put an end to any interruption to a supply (eg electricity) provided by a utility to a customer. Also works needed to avoid substantial financial loss to the utility or where the utility would be under a civil or criminal liability if it did not carry out the works in good time.

All other works covers "**major projects**" (those which have been identified beforehand in a utility's annual operating programme or for which the planning would normally be done at least six months ahead of their proposed start date) and "**standard works**" (any works which do not fall into any of the other categories).

Road category" measures how busy a street is, based on the number of vehicles numbers using it. Category 0 are the busiest and 4 the least busy.

Rationale for intervention

- The Department for Transport appointed consultants, the Halcrow Group, to monitor how far the charging powers introduced in 2001 were effective in reducing the extent to which works overrun. Their third annual report was made public in October 2004. Halcrow calculated that during the three-year period of their study (April 2001 to March 2004) utility works took longer than the agreed duration - a total of some 3 million days, although some of these overruns were disputed by the undertakers. Table 2 shows the data for 2003-04. These overruns represented around 17% of the total duration of the works. This provides a challenge to local authorities to deliver the Network Management Duty under Part 2 of the TMA.

Table 2: National total (factored) number of days overrun for each sector (April 2003 to March 2004) by works category

Works category	Electricity	Gas	Telecoms	Water	All Sectors
Major & Standard	99,583	171,033	31,485	153,294	455,395
Minor with excavation	3,867	3,294	11,236	35,023	53,420
Minor without excavation	7	26	5	619	657
Urgent & Emergency	36,588	100,333	11,066	17,335	165,322
Total	140,045	274,686	53,792	206,271	674,794

- The case for intervention is further justified by a Court of Appeal judgment in 2003 which led to uncertainty in the application of the section 74 charging regime. This has meant that both authorities and utilities have been left in doubt as to when overrun charges are payable. As a result, some authorities have chosen not to follow up overrunning works as actively as they had been.

11. At the request of representative bodies for both local authorities and undertakers, the Government agreed to review the 2001 Regulations. If they were not revised, the uncertainty created by the Court of Appeal judgment would continue and undermine the overrun charging scheme. A Working Group comprising representatives of the Department for Transport, utility companies (from the gas, water, electricity and telecommunications sectors) and highway authorities was convened to consider the issues.
12. The replacement 2009 Regulations will impact on:
 - highway authorities in England (including county councils, London boroughs, unitary authorities and Metropolitan Borough Councils, Transport for London and the Highways Agency).
 - some 200 utility companies who have the right to carry out works in the street.

Consultation

Within Government

13. Consultation took place within Government, in particular with: (i) the former Department of Trade and Industry, (ii) the Department of the Environment, Food and Rural Affairs, (iii) the former Department for Constitutional Affairs, (iv) the Home Office, (v) HM Treasury and (vi) the utility regulators Ofgem, Ofwat and Ofcom.

With the public

14. The Department for Transport launched an initial consultation on the detailed provisions under Parts 3 and 4 of the Traffic Management Act 2004 (TMA) (Permits, Notices and Fixed Penalty Notices) on 1 February 2005. The consultation closed on 26 April 2005. Hard copies of the documentation were sent to 585 key stakeholders and there were four regional seminars held. In total, 240 responses were received via post and email to this consultation. The consultation report and consultation documents may be found online at: <http://www.dft.gov.uk/consultations/archive/2005/tma/>
15. The Department for Transport has consulted on replacement section 74 Regulations on three occasions:
 - 2005 - 12 week consultation, 585 invitations, 240 responses
 - 2006 - 6 week consultation, 687 invitations, 208 responses
 - 2007 - 4 week consultation, 800 invitations, 132 responses
16. The Department's report on the second and third consultations may be found online at <http://www.dft.gov.uk/consultations/archive/2007/keepingtrafficmovingfollowup1736/> and <http://www.dft.gov.uk/consultations/archive/2007/streetworks/>
17. The Department worked with the section 74 Working Group to review the charging options. Given the new Network Management Duty for traffic authorities, which is imposed through the TMA, the Government does not consider that a "do nothing" option of leaving the existing arrangements unchanged is practical for the reasons set out above (see paragraphs 8-10). Ministers have agreed to replace the current section 74 Regulations, as set out below.

Issue 1 - which works should be liable to charges when they overrun?

18. Under the existing 2001 Regulations, works which overrun are liable to charges, with the exception of those with a duration of three days or less (the current prescribed period) or which fall into one of the following definitions of (minimally disruptive) works:
 - a. works which do not involve breaking up the street;
 - b. works to manhole covers, chamber covers or frames;
 - c. replacing poles, lamps, columns or signs in the same location;

- d. pole testing.
19. Various changes to how the various types of utility works are categorised were brought about through the Notices Regulations 2007, which came into effect on 1 April 2008. Therefore, changes were needed to the existing categories of works potentially liable to overrun charges, in order to reflect these new works categories. The proposed new works categories and their definitions are set out in Table 3.
 20. The revised code of practice on co-ordinating undertaker works, and other works in the highway (which was consulted on with the Notices Regulations 2007 in 2006), stresses the importance of highway authorities taking an approach to managing their road network which takes account of the relative importance of different roads.
 21. In light of the changes to the noticing proposals and the responses to the consultations, the Department concluded that charges for unreasonably prolonged occupation should apply to all works exceeding two days in category 0, 1 and 2 streets and in category 3 and 4 streets, regardless of their traffic sensitive designation. Roads carrying more traffic than Category 0 roads are treated as if they were category 0 roads for the purposes of attracting overrun charges.
 22. Certain minimally disruptive works are also exempted and these are works that do not involve breaking up the street, tunnelling or boring under it in the following situations:
 - a. works in a street which is not a traffic-sensitive street;
 - b. works in a footway of a traffic-sensitive street, at a traffic sensitive time;
 - c. works in a traffic-sensitive street, other than at a traffic-sensitive time;
 - d. replacing poles, lamp columns or signs in the same location;
 - e. pole testing;
 - f. or any small diameter holes of less than 3cm in diameter created for investigatory purposes.
 23. In addition, works in streets where vehicular traffic is prohibited by means of a traffic order, or works in highways, bridleways or footpaths where pedestrian planning orders are in force are exempt from overrun charges.
 24. It was decided that the current exemption from overrun charges for works of three days or less should be narrowed to apply to works of two days or less. Even a short overrun can cause significant disruption (see "Benefits - economic" Section below for evidence on the cost of a single day's disruption on the busiest roads).
 25. Alongside this, in response to concerns that certain section 74 charges, especially those applied to minimal equipment and spoil left on site, are disproportionate, a proposal for a mitigated charge was included.
 26. A mitigated charge formalises the ability of highway authorities to reduce or waive the charge as permitted by 2001 Regulation 5(8). There was Working Group agreement that this proposal would address several concerns raised in the 2006 consultation. Undertakers felt that they were being unfairly penalised when local authorities levied full section 74 overrun charges when they had completed works on time but left a small amount of material or equipment in error. Such cases often caused tensions between local authorities and undertakers, reducing the potential for good working relations.
 27. After reviewing the responses to the 2007 consultation, the Department decided that the mitigated charge would work as follows. Following the completion of works, the undertaker has to ensure that the street is fully returned to public use and issue a 'works clear' or 'works closed' notice. If any material (equipment, spoil, etc) had been left in error, the street cannot be considered to be fully returned to public use and section 74 overrun charges would apply. However, if a single item of lighting or guarding or a single traffic sign has been left in error, and free movement of traffic along the street were possible, the mitigated

charge would apply. In such cases, the highway authority would notify a statutory undertaker of the item and give them until the end of the next working day. If the undertaker removed the item in time, they would pay a nominal penalty of £100. If they failed to remove it by the end of the next working day, full section 74 charges would be levied and these would be backdated to the end of the agreed works duration.

28. In delivering their Network Management Duty, local authorities need to give regard to managing traffic on busy, strategically important, roads that will inevitably differ from that for less busy roads in residential areas. The Halcrow report estimated that the cost to road users in urban areas of the disruption caused by an undertakers works that is 200m in length is some forty five times higher where it takes place on a category 0 road (ie the road in question has an daily traffic flow - averaged over a year - of 40,000 vehicles) compared with works on a category 4 road (where the average daily traffic flow is 6,000 vehicles).
29. Increasing existing charge levels should provide a greater incentive on undertakers to ensure that their works are completed promptly. The Working Group has recommended a system of graduated charges (see Table 3) that will allow the most significant works to be targeted. These charges attempt to reflect the cost of the disruption caused by overrunning works more closely than the existing charge levels.
30. The charges reflect the higher impact of major and standard works, due to the scale of works and their duration. The charges are also adjusted to reflect the road category and in the case of quieter road category 3 and 4, whether they are traffic sensitive or not. Works in streets that have been designated as traffic sensitive, under section 64 of NRSWA, are likely to have much greater impact on congestion than roads that are not.

Table 3: Proposed level of charges (2009 Regulations)

	Street of road category 0 or 1	Street of road category 2	Street of road category 3 or 4, being a traffic sensitive street	Street of road category 3 or 4, not being a traffic sensitive street
Major works and Standard works	£2,500	£2,000	£750	£250
Minor works and Immediate works	£500	£500	£250	£100

Road category measures how busy a street is, based on commercial vehicle numbers using it. Category 0 are the busiest and 4 the least busy. For the purposes of these regulations, the definition of Category 0 roads shall be taken to mean roads carrying over 30 million standard axles, with no upper limit.

Traffic sensitive streets are streets which have been designated as the most likely to be disrupted by works, and where stricter controls on works should apply.

Revised definitions under Notices Regulations 2007

Major works are works generally identified in advance in an organisation's annual operating programme or expected to last more than 10 days or works which require a temporary traffic order (eg to shut the street) under the Road Traffic Regulation Act 1984.

Standard works are between 3 and 10 days duration.

Minor works are works of less than three days duration.

Immediate works are **emergency works** (eg to deal with gas leaks) and **urgent works** (eg restoring an electricity supply where this has been severed).

Costs and Benefits

Sectors and groups affected

31. The 2009 Regulations affect all English local authorities and undertakers and their contractors that undertake street works within England. There would be no material differences in the impact on other businesses, voluntary organisations and charities or people in different social groups. Reducing the number of overrunning street works will have an impact on all individuals who use the road network. The benefits of being able to better control these activities for road users are many, including:
- congestion is reduced, with benefits for air quality and other aspects of the environment
 - business can operate more efficiently through quicker and more reliable delivery of goods, service of customers, etc
 - people are able to access their destinations more easily, saving time and effort
 - public transport can operate more easily, potentially further relieving congestion on the road by maximising the use of the existing network.
32. The exact scale of the benefits likely to flow from the changes to the existing system depend upon how far undertakers, who do not fully comply at present, improve their performance and are able to reduce slack time where a street is occupied but no work is being undertaken. It will also depend upon whether street authorities more actively pursue undertakers who fail in their duties and obligations. Overrun charges will support the requirements of the Notices Regulations 2007 and Network Management Duty.

Annual Costs of Delays Caused By Street Works

33. By focussing charges on more significant works on busier roads and through increasing the level of charges, the 2009 Regulations should reduce overrun levels (and hence disruption costs). The benefits of the 2009 Regulations can not be separated from those delivered by Notices Regulations 2007, which this set of Regulations and *The Street Works (Fixed Penalty Notices) (England) Regulations 2007* support. The benefits from a reduction in the congestion caused by street works will depend on the interaction of all three Regulations.
34. Two studies have been carried out to assess the level of disruption caused by works in the street. Halcrow produced a report in July 2004 for the Department for Transport which estimated the annual costs of disruption caused by utility works in England in the year 2002/03 at some £4.3 billion (2002 values). This Impact Assessment bases its calculation of benefits on this work. In response to this, National Joint Utilities Group (NJUG) commissioned Professor Phil Goodwin to review Halcrow's findings. This study adopted a different approach and provided a £1 billion estimate of the cost of congestion caused by street works. Although this is a large variation, it does confirm that the cost of this congestion has a significant impact on the operation of the road network.
35. The Department considers the Halcrow calculation to be more robust as it draws on a larger disaggregated database. It is based upon the estimated annual number of street works of 1.2 million. This figure was extrapolated from a sample of local authorities' notices and was validated by the statutory undertakers.
36. Halcrow provided detailed estimates of the disruption caused by individual works, which can vary according to a series of factors, such as the duration of the work, the traffic flow on the specific road on which they are carried out, whether the roads are single or dual carriageway, the size of the works and even whether works are carried out in rural or urban areas.
37. The Halcrow study modelled street works as constrictions which reduce the capacity of the carriageway, reducing traffic speeds and causing delays. A variety of street works, typical of the range experienced by highway authorities, were assessed. This information was contained in actual notices provided by 25 sample authorities. The impact of street works was derived from:

- The dimension of the works, as approximated by the length of the works.
 - The type of road, as approximated by the reinstatement category of the road.
38. The modelling techniques (QUADRO¹, SATURN² and micro-simulation models such as VISSIM™) used took into account the availability of diversionary routes to road users, which tend to be more restricted in the case of rural networks than congested urban networks. Further work was done to relate the area of reinstatement from the notices to the actual area occupied, as it was found that this affected the extent of the disruption.
39. Data from the traffic models were used to construct tables of daily delay cost rates for rural and urban roads (see table 4). Table 4 contains delay cost rates for street works of different dimensions, and streets with different reinstatement categories. This helped to simplify the process of estimating the daily cost of delay for any works.
40. Information such as journey purpose, vehicle occupancy or vehicle type is usually used to calculate the value of time. This information was not available from the notices provided, so the value of time adopted for this exercise was the 'average vehicle' cost. Using the recommended government values for economic appraisals, this cost is £11.81/hr at 2002 values [Source: Values of Time and Operating Costs, DfT TAG Unit 3.5.6, April 2004³].

Table 4: Daily Cost of Street Works by Reinstatement Category and Length

Rural Roads					
Reinstatement Category*	AADT**	10m	50m	100m	200m
0	<320,000	£2,500	£3,000	£3,300	£4,000
1	16,000	£7,850	£9,050	£10,250	£11,000
2	12,000	£1,610	£2,100	£2,600	£3,530
3	8,000	£780	£970	£1,200	£1,625
4	4,000	£335	£415	£515	£700
Urban Roads					
Reinstatement Category*	AADT**	10m	50m	100m	200m
0	40,000	£25,000	£25,000	£25,000	£25,000
1	24,000	£9,000	£12,000	£15,000	£17,000
2	16,000	£3,450	£5,150	£7,000	£8,800
3	10,000	£385	£535	£710	£1,025
4	6,000	£200	£280	£375	£550

* As defined in *Specification for the Reinstatement of Openings in Highways - Second Edition (2002)*. Reinstatement Category 0 roads are assumed to be dual carriageway roads, Reinstatement Category 1,2, 3 and 4 roads are assumed to be single carriageways. Reinstatement Category is used as a proxy for how busy a road is.

** Annual Average Daily Traffic

41. Delay costs of works vary according to a number of factors. For example, a works that is 50 metres long in an urban road with a daily traffic flow of 40,000 vehicles might cause £25,000

¹ Queues And Delays at Roadworks

² Simulation and Assignment of Traffic to Urban Road Networks

³ <http://www.webtag.org.uk/archive/jun04/pdf/jun04-356.pdf>

of disruptions a day. In contrast, a 10-metre long works on a rural road with a daily traffic flow of 4,000 vehicles may by comparison only cause £335 of disruption a day.

42. Application of the costs in table 4 from the 25 sample authorities to all 150 local authorities shows that the estimate of annual delay at street works in England for the financial year 2002/3 is £4.36 billion (2002 prices). Table 5 provides this information by sector.

Table 5: Delay Costs (£m) for all English highway authorities by sector for Financial Year 2002/3

Electricity	Gas	Telecoms	Water	All Sectors
1,241	1,202	535	1382	4,360

43. Uncertainties over the value of £4.36bn include the following:

- There is a lack of accurate definition of the area occupied by, and of the location of, the works in the carriageway
- The omission of minor works without excavation, some of which entail occupation of the carriageway.
- The uncertain relationship between traffic flow and reinstatement category.
- Where there is an absence of reliable gazetteer information (as is the case for 85% of all works), the lowest reinstatement category (4) has been assumed.
- The estimated level of disruption does not apply to pedestrians, cyclists, public transport users or other road users.

44. Using the GDP deflator tools available on the HM Treasury website⁴ we can see that the annual cost of delays caused by street works is £4.70bn, in 2005 prices, or £4.96bn in 2007 prices

Benefits

45. It has been estimated that overrun charging provisions could be better applied in respect of 22.6% of works undertaken (the percentage of works to which the section 74 charging scheme is to apply). Further work by Halcrow on the potential to reduce road user delay for the Department, suggests that a 5% reduction in works durations could be achieved through more robust and targeted application of the overrun charges and through better challenging of proposed works durations. As mentioned earlier, the exact scale depends how well both highway authorities and utility companies comply. It is hoped that, by refining the charges and clarifying the legal situation, the 2009 Regulations will increase usage of section 74 powers, thus increasing compliance. The findings of the 2007 Consultation suggest that at least 97% of highway authorities will use the new 2009 Regulations to operate overrun charging schemes.
46. Table 6 sets out, in broad terms, the potential direct financial benefits to road users (including businesses, private drivers and public transport users) derived by reducing overrunning utility works, based on Halcrow's figures.

Table 6: Potential financial benefits from reduction in days of overrun

% reduction in overruns	Benefit (2005 prices)	Benefit (2007 prices)
1%	£10.6 million	£11.2 million
2%	£21.3 million	£22.4 million
5%	£53.1 million	£56.1 million
10%	£106.3 million	£112.1 million

⁴ http://www.hm-treasury.gov.uk/economic_data_and_tools/gdp_deflators/data_gdp_index.cfm

47. Assuming that the new Regulations achieve the suggested 5% reduction in overruns, over a twenty year period the total benefit will be £1,122m and assuming a discount rate of 0.035, we can see that the total benefit (over 20 years) will be £825.2m in Present Value. The average annual benefit is £56.1m (2007 prices)

Costs

48. Since the initial consultation, further work has been undertaken to consider the number of works the revised charging scheme will impact by an increase or decrease in the costs which it imposes on utilities compared with the existing scheme (as this will obviously depend upon how many works overrun in future and by how long).

49. The change in the level of costs to undertakers comprises four elements:

- increasing the daily overrun charges, as set out in Table 3;
- changes to the existing categorisations of works;
- reducing the duration below which works cannot attract charges from 3 days or less to 2 days or less;
- the inclusion of a mitigated charge, where a nominal penalty of £100 is levied where the undertaker has endeavoured to clear the site but a single item of signing, lighting or guarding has been left on site but cleared by the end of the next working day, as opposed to the full penalty.

50. Halcrow have carried out a study of works which overran in the final year of their previous study (ie 2003/04) based on the old works category types and converted these to the new works category types which would apply under the proposed new scheme. Their findings are set out in Table 5

Table 5: Number of days overrun in 2003-04 (based on new works categories)			
Works Category	Road Category 0, 1 or 2	Road Category 3 or 4	Total
Major & Standard	84,782	370,614	455,396
Minor with excavations	9,378	44,701	54,079
Urgent & Emergency	34,070	131,250	165,320
Total	128,230	546,565	674,795

51. Based on the extent to which works overran in 2003/04, Halcrow have calculated that under the existing 2001 Regulations, undertakers would have been liable for charges of approximately £301.5m. This has been calculated assuming that all highway authorities run an overrun charging scheme and enforce it fully.

52. Had the 2009 Regulations been in place, Halcrow estimated that the total amount for which undertakers would have potentially have been liable in section 74 charges would vary between £243.1m and £338.7m, depending on the extent of non-excavatory works. The Department has assumed that the actual liability falls between these two extremes ie approximately £290.9m. This represents a decrease of 3.51% compared with the potential liability under the existing 2001 Regulations. These figures have been calculated on the basis that all local highway authorities would operate a section 74 scheme and apply charges rigorously.

53. The Department is aware of several examples of where the mitigated charge could have been used. However, it has not been possible to calculate how many times it would have been levied in a given year on a national basis. Therefore, any reduction in the total potential liability cannot be calculated. The Department considers that the mitigated charge will help ease tensions between local authorities and undertakers, thus helping improve co-ordination efforts.

54. In the 2007 consultation, the Department sought to identify how many highway authorities currently operate an overrun charging scheme and how many will run one when the 2009

Regulations come in to force. Of the 88 highway authorities responding, 93% said that they operate an overrun scheme and almost 98% indicated that they would in the future. The Department considers that if these responses are typical of all the English local authorities, the assumption used to calculate the maximum potential liabilities are valid.

55. The behaviour change expected is to remove or reduce the time where a street is occupied but no works activities are being carried out (eg reducing the time between completion of work and reinstatement). There is an optimum level of resource that can be applied to a set of works and simply increasing the resource level will not necessarily produce a proportional increase in productivity and corresponding reduction in the liability of section 74 overrun charges. The additional cost to undertakers lies in the need for additional planning and programme staff rather than operatives. Therefore, this is the cost considered to enable section 74 overrun charges to be avoided.
56. It is assumed that there will be one undertaker from each of the electricity, gas and water sectors and 2 from the telecoms sector (BT plus one other) in each of the 150 highways authorities. Assuming the additional planning work required to mitigate the section 74 overruns could be undertaken by 0.5 full time equivalents (FTEs) per undertaker, a resource of 375 FTEs would be required. This would be at an approximate total 'cost of change' of £29m, based on an average salary of £35k and a 120% on-cost (2007 values). The 120% on-cost is an estimate of the type of non salary costs that undertakers would incur in employing a resource (eg National Insurance, Pension, business overheads, etc.).
57. The need for additional planning (but not necessarily planners) will be on-going and it may be assumed that the additional burden on industry will have been absorbed 5 years after the Regulations come into force. It is hoped that undertakers will undergo a cultural change which means that works will, in the longer term, be better planned without the need for additional planners.
58. Assuming that the financial burden of the new planners is absorbed at a steady rate over 5 years (ie a straight-line decrease of £5.8m/year from 2009 onwards), the total cost to undertakers over the twenty years after implementation will be £87m (2007 values), or £83.2m in Present Value terms. This equates to an average annual cost of £4.4m (2007 prices). There are currently some 200 undertakers who can carry out street works; this means that the average cost to an undertaker will be approximately £87,000 per year for the first 5 years. The costs will not fall evenly over the 20 years and are concentrated in the first 5 years.
59. It may also be possible that undertakers will be able to provide incentives so that their existing planners to work more effectively, which would reduce the need for additional planning staff. It is not possible to estimate the cost of this, or the effect on the need for planning.
60. Given that the costs would only apply to works that overrun and are avoidable it is impossible to accurately predict the liability. Halcrow have estimated that the total liability could be in the region of £290.9m based on the level of overruns observed in their study of the scheme. NJUG has estimated that the increase in section 74 charges will cost its members an additional £12m a year. It must be noted that if street works are better planned, the liabilities faced by the undertakers will be reduced ie if no works overrun, no charges can be levied.
61. Table 7 provides a comparison of the potential liability faced by firms in terms of Section 74 charges, for overrunning on street works, against the cost of improved planning, in the first year the Regulations are introduced. The costs of improved planning in the first year are around eight to eleven times lower than the potential liability undertakers face, it is reasonable to expect undertakers will use better planning to avoid works overrunning, even if this initially costs more staff time.

Table 7: Potential liability and Costs for Section 74					
	Electricity	Gas	Telecoms	Water	Totals
Improved planning	£5,655,000	£5,394,000	£5,887,000	£12,064,000	£29,000,000
<i>Potential liability * (low estimate)</i>	<i>£82,144,000</i>	<i>£72,813,000</i>	<i>£30,212,000</i>	<i>£57,978,000</i>	<i>£243,147,000</i>
<i>Potential liability * (average)</i>	<i>£85,066,500</i>	<i>£98,301,500</i>	<i>£32,614,000</i>	<i>£74,963,000</i>	<i>£290,945,000</i>
<i>Potential liability * (high estimate)</i>	<i>£87,989,000</i>	<i>£123,790,000</i>	<i>£35,016,000</i>	<i>£91,948,000</i>	<i>£338,743,000</i>
* If undertakers invest in better planning, then the potential liability will be mitigated.					

62. Changes will be needed to the systems, both electronic and paper, which are used by authorities and undertakers to exchange information on individual works to accommodate the revised classifications of works and notification periods which will result from the Notices Regulations 2007. The associated costs were outlined in the Regulatory Impact Assessment for those Regulations⁵. The changes introduced as a result of the revised section 74 charging scheme should only require minor changes on top of this and have a minimal impact on the costs.
63. Meetings have been held with the developers of the software used to run the noticing systems in both authorities and utilities, to discuss the implications of the changes and what this means for the systems.
64. Highway Authorities will incur some costs associated with running the section 74 charging scheme. It is intended that monies gained from section 74 charges will be used to offset the operating costs of the scheme with any excess used to develop policies to promote and encourage safe, integrated, efficient and economic transport facilities and services. As such, there should be no net additional cost to highway authorities. It must be noted that section 74 charges are not intended to be a revenue source for highway authorities.

Impact on Admin Burdens Baseline

65. As the 2009 Regulations replace the existing 2001 Regulations, the Department does not believe that there will be any increase in Admin Burdens. Undertakers already pay for the cost of paying for overrun charges. The 2009 Regulations change the amount to be paid but not the cost of payment. In addition, because of the Notices Regulations and the Electronic Transfer of Notices (EToN) system, undertakers will already have the facilities in place to deal with section 74 noticing requirements.
66. There may be a possibility that the Admin Burdens baseline will be reduced as the EToN system will allow for industry wide efficiency savings ie EToN will be faster (and thus ultimately cheaper) than some existing noticing systems.

Balance of costs and benefits

67. On balance, the Government believes that the changes will be beneficial in that they will ensure that resources are concentrated on managing better those works which are most likely to cause disruption, whilst also being likely to reduce the overall cost burden on utilities. An investment of £29m in additional coordination effort in the first year of implementation will mitigate the potential liability of £290.9m for section 74 overrun charges and produce a direct minimum benefit of £56.1m in reduced road user delays costs. Table 7 provides a summary of all costs and liabilities arising from the revised section 74 Regulations.
68. Given that it is possible to mitigate the potential liability, the Department thinks it is reasonable to assume that the only cost will be that of improved planning. Table 8 below demonstrates the schedule of costs and benefits over time.

⁵ <http://www.dft.gov.uk/consultations/closed/keepingtraffickingmovingfollowup/partialriaforregistersnotice1742>

Table 8: Benefits and Costs for Section 74		
Year	Annual Benefits (2007 prices)	Annual Costs (2007 prices)
1	£56.1m	£29m
2	£56.1m	£23.2m
3	£56.1m	£17.4m
4	£56.1m	£11.6m
5	£56.1m	£5.8m
6 onwards	£56.1m	£0

69. Therefore, the net benefit of the new Regulations, over the twenty years following implementation, will be £742m (ie Total Benefit of £825.2m less the Total cost of £83.2m (Present Value / 2007 prices)). It must be remembered that if the new Regulations result in reductions of more, or less, than 5%, in works durations, the Net Benefit will change. For example, if a 10% reduction is realised then the Net Benefit will increase to £1,565.8m.
70. The Department intends to review the effectiveness of the 2009 section 74 Regulations, along with other Regulations introduced as a result of the Traffic Management Act 2004 in 2010.

Compensatory simplification (offsetting)

71. The proposed 2009 Regulations are intended to replace the existing 2001 Regulations.
72. In addition, given the Court of Appeal's judgement in 2003 which led to uncertainty amongst authorities and undertakers over how to apply the charging regime, there is a need to replace these Regulations. By doing so, the Department is making it possible for more highway authorities to run section 74 charging schemes.

Specific Impact Tests: Checklist

Use the table below to demonstrate how broadly you have considered the potential impacts of your policy options.

Ensure that the results of any tests that impact on the cost-benefit analysis are contained within the main evidence base; other results may be annexed.

Type of testing undertaken	<i>Results in Evidence Base?</i>	<i>Results annexed?</i>
Competition Assessment	No	Yes
Small Firms Impact Test	No	Yes
Legal Aid	No	Yes
Sustainable Development	No	Yes
Carbon Assessment	No	Yes
Other Environment	No	Yes
Health Impact Assessment	No	Yes
Race Equality	No	Yes
Disability Equality	No	Yes
Gender Equality	No	Yes
Human Rights	No	Yes
Rural Proofing	No	Yes

Specific Impact Tests

Competition Assessment

1. A competition filter test was carried out on the likely effect of the Regulations. The Regulations would affect four sectors within the private sector: (i) water utilities, (ii) electricity utilities, (iii) gas utilities and (iv) telecommunications utilities. Water and electricity companies (such as Thames Water and Eastern Electricity respectively) operate on a regional basis, rather than in direct competition to each other. In the water sector companies operate local and regional monopolies. In the electricity sector, the distribution businesses operate on a regional basis, rather than in direct competition with each other. The gas sector has regional distribution networks that operate as regional monopolies, similar to the electricity companies. Given all the above, we do not believe that the Regulations would have a significant effect on competition in any of these three sectors.

2. The situation in the telecommunications sector is somewhat different. The sector has been regulated since the privatisation of BT in 1984 and different companies are in direct competition with each other in relevant areas such as residential and business access. Ofcom has found that BT has Significant Market Power in these areas, with around 80% of the UK market.

3. The Department does not believe that there would be significant implications for competition in the telecommunications sector from the new arrangements, especially, as explained above, charges can be avoided by utilities ensuring that works are completed by the agreed deadline.

Small Firms Impact Test

4. The impact on small business should be limited as the changes being introduced would predominantly affect local and national highway authorities and utilities (ie water, gas, electricity and telecommunications companies).

5. Representatives of small businesses will be consulted as part of the 4 week public consultation on the draft proposals.

Legal Aid Impact Test

6. The section 74 Regulations will not introduce new criminal sanctions or civil penalties.

Sustainable Development

7. The Department feels that the section 74 Regulations comply with Sustainable Development principles.

Carbon Assessment

8. While transport is one of the major contributors to greenhouse gas emissions, it is difficult to model the impact overrun charging schemes will have. Vehicular Carbon Dioxide, and other greenhouse gas, emissions are linked to the speed of travel. Congestion will affect the speed of travel. However, the level of congestion caused by street works varies according to local factors, such as existing levels of road traffic, street design, type of vehicle, engine efficiency, time of journey and speed of travel. This means it is hard to produce a robust and defensible estimate of how much carbon will be saved by reducing street works associated traffic congestion.

Other Environment

9. A reduction in traffic congestion will result in an improvement in local air quality. There will also be a reduction in noise pollution.

Health

10. The section 74 Regulations will not have a direct impact on health. By improving air quality, through the reduction in congestion, there will be indirect health benefits.

Race Equality

11. There will be no impact on Race Equality.

Disability Equality

12. There will be no impact on Disability Equality.

Gender Equality

13. There will be no impact on Gender Equality.

Human Rights

14. There will be no impact on Human Rights.

Rural Proofing

The section 74 Regulations should not impact on rural communities unfairly. While the positive effects will predominately be felt in urban areas, all parts of England will benefit from a reduction in the number of street works which overrun.