

**EXPLANATORY MEMORANDUM TO**  
**THE STREET WORKS (CHARGES FOR OCCUPATION OF THE HIGHWAY)**  
**(ENGLAND) (AMENDMENT) REGULATIONS 2018**

**2018 No. 215**

**1. Introduction**

- 1.1 This explanatory memorandum has been prepared by the Department for Transport and is laid before Parliament by Command of Her Majesty.

**2. Purpose of the instrument**

- 2.1 These Regulations amend the Street Works (Charges for Occupation of the Highway) (England) Regulations 2012 (“the 2012 Regulations”). Their sole purpose is to remove regulation 1(3) of the 2012 Regulations which provided that they would expire on 13th March 2019. Accordingly, the 2012 Regulations will remain in force until amended or revoked.

**3. Matters of special interest to Parliament**

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

- 3.1 None.

*Matters of special interest to the House of Commons.*

- 3.2 As this instrument is subject to the negative procedure and has not been prayed against, consideration as to whether there are other matters of interest to the House of Commons does not arise at this stage.

**4. Legislative Context**

- 4.1 The 2012 Regulations governing charges for the occupation of the highway (“lane rental”), made pursuant to section 74A of the New Roads and Street Works Act 1991, permit highway authorities authorised by the Secretary of State to charge an undertaker executing street works, with the charge being dictated by the duration of the works.
- 4.2 Regulation 1(3) of the 2012 Regulations provides that they will cease to have effect on 13th March 2019. These Regulation remove that paragraph to allow lane rental to continue.

**5. Extent and Territorial Application**

- 5.1 The extent of this instrument is England and Wales.
- 5.2 The territorial application of this instrument is England only.

**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**

### *What is being done and why*

- 7.1 Street works relate to the placing of apparatus in the road and subsequent works relating to the apparatus. Lane rental allows local highway authorities to reduce the impact of street works on the busiest roads at the busiest times through charging those undertaking the street works according to the duration of the works. The 2012 Regulations do not apply to road works which are for the maintenance or improvement of the road.
- 7.2 Two pioneer schemes have been successfully operating on around half of Transport for London's network, and on approximately 5% of the network managed by Kent County Council. Charges have been applied according to the regulations and, on a voluntary basis, to road works.
- 7.3 The Government published two consultations on 2<sup>nd</sup> September 2017. The main consultation was about the long term future for lane rental. Four options were presented: (1) ending lane rental schemes; (2) keeping lane rental but only in London and in Kent; (3) rolling out lane rental to other local authority areas; or (4) using permit schemes as a way of reducing the disruption caused by street and road works on the most congested roads.
- 7.4 The regulations covering these schemes contain a 'sunset' clause so the schemes will end in March 2019 unless the 2012 Regulations are amended. The Government also published a separate consultation on removing this sunset clause as an interim solution. This will allow the schemes in London and Kent to continue until a longer term solution is agreed and implemented. This is beneficial both operationally and practically, it will remove any uncertainty, and it will avoid any need for Transport for London and Kent County Council to wind down operations unnecessarily. Operational changes will involve costs to those authorities and to the utility companies working in those areas.
- 7.5 The consultation on the interim solution closed on 16th September. A majority of responses supported the amendment. The Government, therefore, decided to proceed with the proposal and announced its decision on 26th December 2017.
- 7.6 The Government has since considered responses to the main consultation on the future of lane rental, and it announced on 16<sup>th</sup> February 2018 that it intends to proceed with Option 2: allow other local authorities to set up lane rental schemes. No additional amendments to the 2012 Regulations will be needed. Schemes will be set up on the basis of existing legislation.
- 7.7 It is anticipated that new lane rental schemes will be put in place from 2019/2020 onwards.

### *Consolidation*

- 7.8 This instrument is the first amendment to the 2012 Regulations and makes one amendment to them, so consolidation is not necessary.

## **8. Consultation outcome**

- 8.1 A public consultation entitled "Road works: Interim solution for lane rental" was published at <https://www.gov.uk/government/consultations/lane-rental-schemes-for-roadworks-removal-of-sunset-clause> on 2nd September 2017 and ran until 16th

September. It was also sent to stakeholders. There was only one question: “Do you agree that the Department for Transport should remove the existing sunset clause in the Street Works (Charges for Occupation of the Highway) (England) Regulations 2012?”

- 8.2 75 responses were received to the consultation and 61% of the respondents supported the removal of the sunset clause. Whilst all of the 24 local highway authorities that responded supported the proposal, all 22 utility companies and both contractors responding opposed it. 18 members of the public responded and 94% supported the proposal. Of the remaining 9 respondents (public sector organisations and those responding on behalf of another organisation or stakeholder), 55.5% were in favour of the proposed change.

Yes		No	
24	Local highway authorities	22	Utility companies
17	Members of the public	1	Member of the public
4	Public sector organisations	1	Public sector organisation
1	On behalf of another organisation or stakeholder	3	On behalf of another organisation or stakeholder
		2	Contractor
46	<b>Total</b>	29	<b>Total</b>

## 9. Guidance

- 9.1 Guidance on lane rental schemes was provided to local highway authorities in January 2012 (New Roads and Street Works Act 1991. Lane Rental Schemes: Guidance to English Local Highway Authorities) and a copy can only be obtained at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/3741/guidance.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/3741/guidance.pdf) or through the contact provided in paragraph 13.
- 9.2 As this instrument will not amend the operative provisions of the 2012 Regulations further guidance is unnecessary.

## 10. Impact

- 10.1 The impact on business, charities or voluntary bodies is the same as that outlined in the Impact Assessment published alongside the 2012 Regulations. (A copy of that Assessment can be obtained at [http://www.legislation.gov.uk/ukia/2012/58/pdfs/ukia\\_20120058\\_en.pdf](http://www.legislation.gov.uk/ukia/2012/58/pdfs/ukia_20120058_en.pdf) or through the contact provided in paragraph 13.) The amendment will enable the existing schemes in London and in Kent to continue. There is therefore no change to the regulatory provisions, and no additional costs or benefits to business or the public sector.
- 10.2 The impact on the public sector is the same as that outlined in the Impact Assessment published alongside the 2012 Regulations.
- 10.3 An Impact Assessment has not been prepared for this instrument. As the regulatory provisions are unaltered the impact remains the same as that outlined in the Impact Assessment published alongside the 2012 Regulations.

## **11. Regulating small business**

- 11.1 The legislation applies to activities that are undertaken by small businesses.
- 11.2 To minimise the impact of the requirements on small businesses (employing up to 50 people), the approach taken is as outlined in paragraph 11 of the Explanatory Memorandum to the 2012 Regulations. These Regulations maintain the existing regulatory system and so the benefits to small business and the measures intended to mitigate any impact outlined in that Memorandum continue to apply. The Explanatory Memorandum can be obtained at [http://www.legislation.gov.uk/uksi/2012/425/pdfs/uksiem\\_20120425\\_en.pdf](http://www.legislation.gov.uk/uksi/2012/425/pdfs/uksiem_20120425_en.pdf) or through the contact provided in paragraph 13.

## **12. Monitoring & review**

- 12.1 This instrument preserves the regulatory provisions (as defined by section 32(4) Small Business, Enterprise and Employment Act 2015 (“the 2015 Act”)) within the 2012 Regulations but does not amend them. A sunset clause is not a regulatory provision and so the Department considers that an instrument amending a non-regulatory provision is, similarly, not regulatory. For this reason, the Department’s view is that this instrument does not fall within the remit of section 28 of the 2015 Act and so the obligation to consider whether to include a review provision does not arise.

## **13. Contact**

- 13.1 Sally Kendall at the Department for Transport (Telephone: 07826 902195 or email: [sally.kendall@dft.gsi.gov.uk](mailto:sally.kendall@dft.gsi.gov.uk)) can answer any queries regarding the instrument.