
STATUTORY INSTRUMENTS

2022 No. 830

HIGHWAYS, ENGLAND

The Street Works (Inspection Fees) (England) Regulations 2022

<i>Made</i>	- - - -	<i>18th July 2022</i>
<i>Laid before Parliament</i>		<i>21st July 2022</i>
<i>Coming into force</i>	- -	<i>1st April 2023</i>

The Secretary of State, in exercise of the powers conferred by sections 75 and 104(1) and (3) of the New Roads and Street Works Act 1991(1), makes the following Regulations.

Citation, commencement and extent

1.—(1) These Regulations may be cited as the Street Works (Inspection Fees) (England) Regulations 2022 and come into force on 1st April 2023.

(2) These Regulations extend to England and Wales.

Interpretation

2.—(1) In these Regulations—

“Reinstatement Code of Practice” means the code of practice entitled “Specification for the Reinstatement of Openings in Highways” dated May 2020 and approved by the Secretary of State for Transport on 10th May 2020, as revised or re-issued from time to time;

“Safety Code of Practice” means the code of practice entitled “Safety at Street Works and Road Works” dated October 2013 and issued by the Secretary of State for Transport under section 65 (safety measures) of the New Roads and Street Works Act 1991(2), as revised or re-issued from time to time;

“quarter” means a period of three months beginning on 1st January, 1st April, 1st July or 1st October;

“works” means street works involving the excavation or reinstatement of any part of a street;

“year” means a year beginning on 1st April and ending on 31st March.

(2) Any reference in these Regulations to—

(1) 1991 c. 22. Section 75 of the New Roads and Street Works Act 1991 was substituted by section 58(2) (inspection fees) of the Traffic Management Act 2004 (c. 18). Section 58(2) was commenced for the purpose of making regulations by the Traffic Management Act 2004 (Commencement No. 11) (England) Order 2022 (S.I. 2022/649).

(2) Section 65 was amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

“applicable percentage” is to be construed in accordance with whichever of regulations 6, 7 or 9 apply;

“unit of inspection” is to be construed in accordance with regulation 4; and

“reckonable units of inspection” is to be construed in accordance with whichever of regulations 5 or 8 apply.

Inspection fee

3.—(1) An undertaker⁽³⁾ must pay to the street authority⁽⁴⁾ a fee of £50.00 for each chargeable inspection of works carried out by the street authority.

(2) In this regulation—

(a) a “chargeable inspection of works” is an inspection at random of at least 5 per cent of works from each inspection category and not more than the applicable percentage of an undertaker’s total number of reckonable units of inspection in any year; and

(b) the inspection categories are—

(i) an inspection undertaken during the period when the works are being carried out, ending with the day on which interim or permanent reinstatement is completed;

(ii) an inspection undertaken within the period of six months starting with the day on which interim or permanent reinstatement is completed; and

(iii) an inspection undertaken within the period of three months immediately preceding the end of—

(aa) in the case of excavations to a depth exceeding 1.5 metres to the top of the apparatus over a length of 5 metres or more, three years from completion of permanent reinstatement,

(bb) in any other case, two years from the completion of permanent reinstatement.

Calculation of inspection units

4. The number of units of inspection is calculated by reference to the duration of excavation works only, and on the following basis:

Unit of inspection

<i>Duration of works</i>	<i>Unit(s)</i>
Duration of 15 working days or less	1
Duration of 16 to 30 working days	2
Duration greater than 30 working days	3

Reckonable units of inspection

5.—(1) For the year beginning on 1st April 2023, except in the case of an undertaker to which regulation 8 applies, the number of reckonable units of inspection is the average of the number of units of inspection for an undertaker per year calculated over the two-year period which began on 1st April 2021 and ended on 31st March 2023.

(3) See section 48(4) and (5) of the New Roads and Street Works Act 1991 (c. 22) for the definition of “undertaker”.

(4) See section 49 of the New Roads and Street Works Act 1991 (c. 22) for the definition of “street authority”.

(2) For years beginning on or after 1st April 2024, except in the case of an undertaker to which regulation 8 applies, the number of reckonable units of inspection in a year is the average of the number of units of inspection for an undertaker per year calculated over the three preceding years.

Applicable percentage for the quarter beginning on 1st April 2023

6.—(1) Except in the case of an undertaker to which regulation 9 applies, the applicable percentage of an undertaker’s total number of reckonable units of inspection for the quarter beginning on 1st April 2023 is—

- (a) 30 per cent in a case where an undertaker has a failure rate lower than 15 per cent, or
- (b) 50 per cent in a case where an undertaker has a failure rate of 15 per cent or higher.

(2) In this regulation, “failure rate” is the percentage of an undertaker’s chargeable inspections of works which, in the year which began on 1st April 2022, failed to comply with the standard set out in whichever of the Reinstatement Code of Practice or the Safety Code of Practice was applicable to the inspection category.

(3) For the purposes of paragraph (2), an inspection is deemed to have failed to comply with the standard where the undertaker and the street authority have agreed that the standard was not met.

Applicable percentages for subsequent quarters

7.—(1) Subject to paragraph (2), except in the case of an undertaker to which regulation 9 applies, the applicable percentage of an undertaker’s total number of reckonable units of inspection for a quarter beginning on or after 1st July 2023 is the undertaker’s applicable percentage for the previous quarter adjusted on the following basis:

Applicable percentage quarterly adjustment calculation

<i>Undertaker’s failure rate in previous quarter (%)</i>	<i>Percentage point adjustment to previous quarter’s applicable percentage</i>
0.00 to 9.99	Decrease by 5 percentage points
10 to 14.99	0
15 or above	Increase by 5 percentage points

(2) The minimum applicable percentage for a quarter is 20 per cent.

(3) In this regulation, “failure rate” is the percentage of an undertaker’s chargeable inspections of works which, in the previous quarter, failed to comply with the standard in whichever of the Reinstatement Code of Practice or the Safety Code of Practice was applicable to the inspection category.

(4) For the purposes of paragraph (3), an inspection is deemed to have failed to comply with the standard where the undertaker and the street authority have agreed that the standard was not met.

New undertakers: reckonable unit estimates

8.—(1) Where an undertaker has not previously executed any street works⁽⁵⁾ in streets for which the authority making the inspections is the street authority (a “new undertaker”), the number of reckonable units of inspection for each of the first three years is the estimated number of units of inspection for the undertaker for that year.

(5) See section 48(3) of the New Roads and Street Works Act 1991 (c. 22) for the definition of “street works”.

(2) For the purposes of making the estimate referred to in paragraph (1), a new undertaker must, prior to carrying out any works in streets for which the authority making the inspections is the street authority, provide the street authority with an estimate of the number of units of inspection they expect to generate in that year.

(3) Where a new undertaker fails to provide the street authority with an estimate referred to in paragraph (2), the street authority may carry out as many inspections as it considers reasonably appropriate and may charge a fee of £50.00 for each such inspection, until such time as the undertaker provides the street authority with an estimate, at which point paragraph (4) applies.

(4) Once the new undertaker referred to in paragraph (3) has provided an estimate to the street authority, the provisions of paragraph (1) apply, and the first three years referred to in paragraph (1) are deemed to commence on the date on which the estimate is received by the street authority.

New undertakers: applicable percentage for first full quarter

9.—(1) This regulation applies to an undertaker who—

- (a) has not previously executed any street works in streets for which the authority making the inspections is the street authority, or
- (b) at the start of any quarter beginning on or after 1st April 2023, has not been executing street works in streets for which the authority making the inspections is the street authority for a full quarter.

(2) The applicable percentage of an undertaker's total number of reckonable units of inspection for the first full quarter in which it executes street works in streets for which the authority making the inspections is the street authority, is 30 per cent.

Revocations

10. The following Regulations are revoked—

- (a) the Street Works (Inspection Fees) (England) Regulations 2002(6);
- (b) the Street Works (Inspection Fees) (England) (Amendment) Regulations 2004(7);
- (c) the Street Works (Inspection Fees) (England) (Amendment) Regulations 2007(8);
- (d) the Street Works (Inspection Fees) (England) (Amendment) Regulations 2008(9);
- (e) the Street Works (Inspection Fees) (England) (Amendment) Regulations 2009(10).

Signed by authority of the Secretary of State for Transport

18th July 2022

Vere
Parliamentary Under Secretary of State
Department for Transport

(6) S.I. 2002/2092, amended by S.I. 2004/572, S.I. 2007/584, S.I. 2008/589 and S.I. 2009/104.
(7) S.I. 2004/572.
(8) S.I. 2007/584.
(9) S.I. 2008/589.
(10) S.I. 2009/104.

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Street Works (Inspection Fees) (England) Regulations 2002 (“the 2002 Regulations”) (S.I. 2002/2092) were made under section 75 (inspection fees) of the New Roads and Street Works Act 1991 (c. 22) (“the 1991 Act”) and prescribed the scheme for the payment by undertakers for inspections of their works by street authorities. These Regulations revoke the 2002 Regulations (and the four subsequent sets of amending regulations) and replace them with new regulations made under section 75 as substituted by section 58(2) of the Traffic Management Act 2004 (c. 18).

These Regulations prescribe the fee for each chargeable inspection of works (which remains £50 – regulation 3(1)) and introduce a performance-based system of inspections to ensure that undertakers with poor levels of compliance will be inspected more frequently than those with high levels of compliance.

Undertakers will have either 30 per cent or 50 per cent of their works inspected in the first quarter of the financial year beginning 1st April 2023, depending on whether or not, in the previous 12-month period, their failure rate was below 15 per cent. 5 per cent of the inspections should be from each of the three inspection categories. These “inspection categories” are the same as the three “phases of works” in the 2002 Regulations and refer to inspections taking place during the works, within 6 months of reinstatement, and just before the expiry of two or three years’ following reinstatement (see regulation 3(2)(b)).

An undertaker’s inspection units will be calculated according to the duration of excavation works only (regulation 4) and the previous two years’ worth of data will be used to calculate the number of inspection units at the start of April 2023 (regulation 5(1)). An undertaker’s “failure rate” is the percentage of inspections which failed to comply with applicable Code of Practice (see regulation 6(1)). In subsequent quarters, the number of inspections an undertaker will have is adjusted in accordance with regulation 7 so that those which significantly improve their compliance will have fewer inspections, and vice versa. From 1st April 2024, and in subsequent years, three years’ worth of data will be used to calculate the number of inspection units (regulation 5(2)).

Separate provision is made for new undertakers in regulations 8 and 9.

A full impact assessment has not been produced for this instrument as no, or no significant, impact on the private, voluntary or public sector is foreseen. An Explanatory Memorandum is published alongside the instrument on www.legislation.gov.uk.