

EXPLANATORY MEMORANDUM TO
THE STREET WORKS (REGISTERS, NOTICES, DIRECTIONS AND
DESIGNATIONS) (ENGLAND) REGULATIONS 2007

2007 No. 1951

AND

THE STREET WORKS (FIXED PENALTY) (ENGLAND) REGULATIONS 2007

2007 No. 1952

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. **Description**

2.1. The first set of Regulations ("Notices Regulations") replaces the Street Works (Registers, Notices, Directions and Designations) Regulations 1992 SI 1992/2985 as respects England to take account of changes introduced into the New Roads and Street Works Act 1991 ("1991 Act") by the Traffic Management Act 2004 ("2004 Act"). The Regulations set out the regulatory regime for street works and in particular specify the content of the register, how notices should be exchanged between street authorities and undertakers (e.g. gas, water, electricity and telecommunication companies) about planned or on-going works in a street, and the processes for either designating streets as 'protected', 'special engineering difficulties' or as 'traffic-sensitive' or restricting further works by undertakers in a specific street.

2.2. The second set of Regulations ("FPN Regulations") prescribe the form, manner of service and level of penalties for the fixed penalty notices that street authorities may give in relation to seven offences specified in Schedule 4A to the 1991 Act, as introduced by the 2004 Act. They also deal with a number of related matters. Fixed penalty notices provide an alternative way to deal with certain offences other than through the Magistrates' Court.

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

3.1. The 1991 Act provides for regulations made under it to refer to specific documents as revised or re-issued from time to time. The Notices Regulations refer to the Technical Specification for the Electronic Transfer of Notices (EToN) produced by DfT and dated 5th July 2007. This sets out the technical requirements to be used in developing software that allows highway authorities and statutory undertakers to give and receive electronically the notices required under the 1991 Act. Previously, a statutory code of practice has included the technical requirements. Although not referred to in either set of Regulations, the code of practice has been revised and

updated to provide practical guidance on them, and existing powers under certain sections of the 1991 Act, under the following powers:

- S56: power to give directions as to timing of street works;
- S56A: power to give directions as to placing of apparatus;
- S59: general duty for street authorities to co-ordinate works in the highway;
- S60: general duty for undertakers to co-operate.

3.2. The statutory code of practice is entitled *Co-ordination of Street Works and Works for Road Purposes and Related Matters*. It provides guidance on these Regulations to support consistency of application and to minimise disputes about the processes for ensuring compliance with the Act and Regulations.

3.3. Other sections of the 1991 Act provide for the issue of other Codes of Practice but these are not relevant here, as they are dealt with under other Regulations.

4. Legislative background

4.1. Part 3 of the 1991 Act makes provision in relation to street works carried out in England and Wales. Since devolution these powers are now exercised by the Welsh Assembly Government, which will be making similar Regulations.

4.2. In this context ‘street works’ means certain works 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.

4.3. Provisions within the 1991 Act have been amended by the 2004 Act and these Instruments implement the following sections of that Act:

- section 41 (introduction of fixed penalties);
- section 43 (amends provisions relating to directions on when undertakers may carry out works);
- section 44 (introduces a power that allows a highway authority to direct an undertaker not to place new apparatus in a specific street);
- section 49 (amends the provisions on the exchange of notices between a highway authority and undertaker);
- section 51 (amends provisions relating to restrictions on further works after substantial road works);
- section 52 (introduces restrictions on works following substantial street works); and
- section 54 (amends the provisions on reinstatements following works).

5. Territorial Extent and Application

These Instruments apply as respects England only.

6. European Convention on Human Rights

6.1. Regulation 17 of the Notices Regulations amends section 70(3) and (4A) of the 1991 Act to allow an undertaker ten days to give a notice of the completion of an interim or permanent reinstatement, as opposed to the seven days in the primary legislation, as inserted by the 2004 Act.

6.2. The minister, Rosie Winterton, with regard to this amendment, has made the following statement regarding Human Rights:

"In my view the provisions of The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 are compatible with the Convention rights."

6.3. Regulation 8 of the FPN Regulations amends paragraphs 4 and 5 of Schedule 4B to the 1991 Act that were inserted by the 2004 Act to increase the period within which a fixed penalty notice should be paid. The period for a reduced payment is increased from 15 days to 29 days and the period for full payment from 29 to 36 days.

6.4. The minister, Rosie Winterton, with regard to this amendment, has made the following statement regarding Human Rights:

"In my view the provisions of The Street Works (Fixed Penalty) (England) Regulations 2007 are compatible with the Convention rights."

7. Policy background

7.1. The 1991 Act provides the statutory framework within which undertakers, either those with statutory rights to place apparatus in the highway ('statutory undertakers') or those licensed under the provisions of the Act, place or maintain apparatus in the street. The amendments by the 2004 Act are intended to strengthen the powers of local authorities to control works in the highway by undertakers, so that it can assist in reducing congestion.

7.2. The Notices Regulations are needed to allow implementation of certain provisions in Part 4 of the 2004 Act that strengthen the powers of highway authorities to co-ordinate works in the highway by undertakers and assist in fulfilling their Network Management Duty under the 2004 Act, as well as to reflect changes in circumstances since 1991. While the FPN Regulations are needed to implement the new power to issue fixed penalties for certain offences. The associated statutory Code of Practice has been revised to take account of technological progress and to improve some of the processes.

7.3. Works in the highway by undertakers can affect all road users, including pedestrians, the mobility impaired, cyclists, bus passengers, businesses, as well as drivers of commercial and private vehicles by causing delays or congestion. These Regulations will support the Department's objective to "*Deliver improvements to the accessibility, punctuality and reliability of local and regional transport systems*

through the approaches set out in Objective I and through increased use of public transport and other appropriate local solutions.” See the Department for Transport’s website at <http://www.dft.gov.uk/about/how/psa/spendingreview2004psatargets1>

7.4. Since the 1991 Act was enacted, there have been a number of changes. Privatisation and deregulation of utility companies, along with increased competition in the various utility sectors has increased the number of statutory undertakers and consequently the number of works carried out each year and the scale of co-ordination required to manage them. There are now some 200 utility companies, who, as statutory undertakers, have the right to place apparatus in the highway and to maintain it. In recent years, the number of works has increased due to a 30-year replacement programme for gas mains and initiatives to reduce the number of leaks from water pipes. This is in addition to the expansion of the communications network to meet demand for broadband and digital cable television. It is estimated that there are approximately 1.2 million sets of works carried out by statutory undertakers in the highway each year.

7.5. The system for giving and receiving notices, directions, and restrictions has been electronic for several years as a result of greater use of computers and the expansion of the internet. The changes associated with the amendments from the 2004 Act have provided an opportunity to replace the current protocols for exchanging information with a new system based on XML web services. This will be easier to update and is the Government standard for exchanging data with central and local government. The specification for this is set out in the Technical Specification for EToN, which ensures consistent application of the 1991 Act and Regulations and allows for different organisations’ computing systems to exchange data automatically and to respond accordingly, which aids compliance with the statutory requirements.

7.6. As notices of immediate works have to be given within two hours of works starting, provision needs to be made for when notices for such works would otherwise be due to be given outside normal office hours, including weekends or bank holidays. Therefore Regulation 6(2) of the Notices Regulations provides that undertakers are deemed to have complied with this obligation if the notice is served by 10 am on the next working day, which means that such a notice is given within two hours of the undertaker and street authority having the ability to give or act on notices received. If authorities are able to respond outside normal office hours then the undertaker should give the notice within two hours.

7.7. The introduction of fixed penalty notices for certain offences under the 1991 Act was the result of concerns that taking action through the Magistrates’ Court took time and had relatively high costs in comparison with the fines imposed following a successful prosecution. The fixed penalty notice is levied at £120 for each offence with a discount to £80 if paid within 29 days of the notice. These penalties may be paid by any method specified by the street authority. Part B of the prescribed form of fixed penalty notice is designed to enable detailed instructions to be given in relation to each available method of payment. It was decided not to exercise the power under paragraph 9(c) of Schedule 4B to prescribe the method or methods by which penalties are paid, to allow flexibility for street authorities to specify the most effective method/s for their particular circumstances and to allow undertakers to choose from those.

7.8. A street authority should have sufficient evidence available, as if it were taking an offence to the Magistrates' Court, before issuing a fixed penalty notice. If a fixed penalty notice is not paid, a street authority may still take the case to Court. As there is a six-month time limit for bringing proceedings under section 127 of the Magistrates' Court Act 1980, in prescribing the period under paragraph 2 of Schedule 4B provision needed to be made to allow a street authority to pursue a prosecution if the fixed penalty notice was not paid and to allow the authority sufficient time to prepare for court. It was concluded that this would need to be about three months after the offence, which is approximately 90 days. Section 98 of the 1991 Act assists with the reckoning of periods by providing that where a period is expressed from a given date, that date shall be excluded. However, for the sake of accuracy, and to avoid any disputes, Regulation 6 nevertheless specifies that a fixed penalty notice may not be given more than 91 days after the commission of the offence beginning with the day of its commission.

7.9. The intention is to encourage greater compliance with the noticing requirements of the 1991 Act, which in turn will enable street authorities to be better placed to fulfil their duty to co-ordinate the execution of all works in the highway, including their own.

7.10. If the requirements to provide street authorities with notices are adhered to then there should be a limited need for authorities to issue fixed penalty notices.

7.11. **Involvement of stakeholders** - The policy and detailed changes have been developed in association with the Highway Authorities and Utility Committee (UK) (HAUC(UK)). 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.

7.12. **Consultation** - The proposals have been subject to two rounds of consultation. The first took place in February 2005 and was completed in April 2005. Some 500 bodies were invited to comment, including all highway authorities in England and Wales, statutory undertakers, representative groups for local authorities, undertakers, groups representing different road users, construction firms, consultants, and software development houses. There were some 240 responses, which included 120 English authorities, 11 Welsh authorities, and five groups representing authorities, along with responses from 46 utility companies, seven utility groups and two regulators. Other responses were received from eight fire and rescue services, two software developers and six Government Departments. A summary of these responses can be found at <http://www.dft.gov.uk/consultations/archive/2005/tma/?version=1> .

7.13. In response to the consultation the following changes were made:

- a) number of works categories was simplified with 'programmed' works merged with 'major' with a three-month notice period, instead of the proposed six months;
- b) the notice periods for works were also simplified with the removal of different notice periods according to road category;

- c) the concept of 'incursion' for works that encroach into the carriageway was dropped as part of the definition of works. It was considered confusing. Works, other than immediate works, are now defined by their duration;
- d) the periods of restrictions following major works or highway works were set with exemptions for immediate works and customer connections;
- e) the time period, within which fixed penalty notices can be paid, has been extended to 29 days for discounted amounts and 36 days for payment in full.

7.14. Three Working Groups, with members appointed by HAUC(UK), met to consider further policy changes and the outcome of a follow-up consultation in October 2006. About 550 organisations, including all who had responded to the consultation in 2005, along with other similar bodies, were invited to comment. There were 208 responses from 126 English highway authorities, 9 Welsh highway authorities and 17 representative bodies, along with 27 statutory undertakers and ten representative bodies. There were responses from software developers, fire services and regulators. A summary of the consultation responses can be found at <http://www.dft.gov.uk/consultations/closed/keepingtrafficmovingfollowup/>

7.15. In response to the follow-up consultation, further policy changes were made and are reflected in the regulations. These include:-

- a) decision to retain maximum six month period between interim reinstatement and carrying out permanent reinstatement;
- b) clarified what works by highway authority should be included in register;
- c) provision for street to be designated as traffic-sensitive by agreement;
- d) removal of the requirement for proposed designations or restrictions to be published in local newspapers. Highway authorities must still publish on their websites;
- e) exemptions from restrictions expanded to include works that are the result of other statutory obligations, for example the Health and Safety at Work, etc Act 1974.

7.16. **Guidance** - Under the 1991 Act the Secretary of State provides statutory guidance that is available together with the Technical Specification for EToN. The Department will also undertake a number of road shows to highlight the main changes in the primary and secondary legislation and the statutory Code of Practice. It is planned that there should be one in each English region, which will be organised through the regional HAUC and Government Offices to get as wide a coverage of practitioners as possible. There will be approximately nine months between laying the Notices Regulations and their coming into force on 1st April 2008 to allow for the development of the necessary software, its installation and testing and to allow highway authorities and undertakers to train their staff in the new regime. The statutory Code of Practice and the Technical Specification for EToN are available at www.dft.gov.uk/roads/streetworks/

7.17. The FPN Regulations will come into force on 12th May 2008, which is six weeks after the Notices Regulations to allow application of the new Regulations and associated business processes to be embedded before the option to give fixed penalty notices is in place.

8. Impact

8.1. A Regulatory Impact Assessment for each Instrument is attached to this memorandum.

9. 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.

Regulatory Impact Assessments

Regulatory Impact Assessment: The Street Works (Registers, Notices, Directions and Designations) Regulations (England) 2007

Title of Proposal

1. The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007.

Purpose and intended effect

Objectives

2. The objectives of the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 ("the 2007 Regulations") are to:

- improve traffic flow, through better co-ordination and effective noticing arrangements in planning works;
- reduce the impact that street works can have on the surface of roads; and
- set the framework from which assurance on quality and safety of works flows.

Background

3. The utility companies provide an essential service. They deliver and maintain some of the most important infrastructure, including power, gas, water and telecommunications. Most of these utilities make substantial use of the street, or rather the ground underneath it, for their distribution networks. These activities can lead to disruption and delay to all street users; the general public (pedestrians and motorists), businesses, and public transport. The 2007 Regulations seek to ensure that these street activities are carried out in a timely and efficient manner, to reduce the impact on congestion.

4. Much of the existing legislative framework for controlling activities in the street is contained in the New Roads and Street Works Act 1991 (NRSWA) as amended by Traffic Management Act 2004 (TMA) (see table 1 below). The TMA provides an enhanced and revised framework for the proper management of street works. NRSWA did not anticipate either the scale of works following from the deregulation of the various utility sectors or the associated scale of co-ordination required. There are now some 200 utilities with the right to dig up the road; considerably more than in 1991. As a result, the works carried out by local street authorities and utilities were not always co-ordinated, which contributed to congestion and disruption of the highway.

5. The 2007 Regulations replace the Street Works (Registers, Notices, Directions and Designations) Regulations 1992 ("the 1992 Regulations"). The 2007 Regulations were drawn

up following consideration by a working group comprising representatives of the Department for Transport, utility companies (from the gas, water, electricity and telecommunications sectors) and highway authorities and have been finalised following two public consultations. They replace the 1992 Regulations in England, which will continue to apply in Wales, although the Welsh Assembly Government is proposing to make similar changes.

Table 1 – NRSWA/TMA – relevance for street works (registers, notices and directions)	
Legislation	Relevance to street-works
New Roads and Street Works Act 1991 (NRSWA)	<ul style="list-style-type: none"> ■ provides legislative framework for controlling activities in the street; ■ S59 of NRSWA places a duty on the street authority to co-ordinate highway works and S60 places a duty on undertakers to co-operate in this process; ■ Act provided the framework; details set out in guidance and regulations (in particular the 1992 Regulations).
Amendments within the Traffic Management Act 2004 (TMA)	<ul style="list-style-type: none"> ■ provides a revised and updated legislative framework for controlling activities in the street; ■ provides a network management duty on local traffic authorities to manage their road networks to facilitate the expeditious movement of traffic; ■ management of street works and highways works as one of the aspects of the network management duty; ■ part 3 of the TMA contains provisions for permit schemes; and ■ details of the legislative framework are set out in guidance and regulations (in particular the 2007 Regulations).

6. Two types of bodies will be affected by the changes to the existing regulations: (i) the 150 highway authorities (county councils, London boroughs, unitary authorities and Metropolitan Borough Councils, Transport for London, and the Highways Agency), and (ii) some 200 utilities who have the right to carry out works in the street.

Rationale for government intervention

7. The UK road network is a physical asset of immense value. The strategic road network, managed by the Highways Agency, represents only a small proportion of the road network, but is the Government’s single largest asset, valued at more than £62bn. It is essential that this resource is managed effectively.

8. The Government policy on roads, as set out in the publication “Managing Our Roads” (2003), requires the tackling of congestion and better management of the existing road network. The 2007 Regulations are a key element in this strategy. They will improve the active and coordinated planning of street works, so as to:-

- ensure local highway authorities are provided with sufficient notice, so that they can consider how disruptive the works are likely to be and if and how that disruption could be reduced (for instance by carrying out the work at different times of day or delaying the works until any other works in the area are complete).
- reflect technological advances since 1992, particularly with regard to the issuing and management of the electronic noticing system. This will improve the planned management of the road network through the provision of more accurate data and visible/shared information on planned works.
- address gaps in the existing powers (for example, to allow the location as well as timing of works to be influenced by authorities); and
- safeguard the public investment in the highway, through strengthening the provisions for highway authorities to restrict street works by including longer restriction periods and introducing restrictions following substantial street works.

9. The risk of not updating and strengthening the powers for highway authorities to control utility works is that unnecessary disruption to road users, and local residents and businesses continues, worsening congestion, safety and car pollution. It would also fetter the ability of local street authorities to fulfill the network management duty.

Consultation

Within Government

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

Public consultation

11. The Department for Transport ("the Department") launched its second consultation, on the 2007 Regulations on 12 October 2006. The consultation closed on 23 November 2006. An earlier consultation was completed in April 2005. Hard copies of the documentation were sent to 697 key stakeholders. In total, 208 responses were received via post and email to this consultation.

12. As a result of the consultation, the following key changes have been made to the consultation draft of the 2007 Regulations :-

- Provision for designating a street as traffic-sensitive with the agreement of the majority of statutory undertakers whom the street authority know to have apparatus in the street is now included.

- Information with respect to other descriptions of works has been revised so that the information regarding street authority works for road purposes and major highway works includes "description, timing and location".
- The requirement for a short description of the shape of the reinstatement in the Notice of Completion of Reinstatement has been removed.
- The period in which an undertaker must complete the permanent reinstatement has reverted to "as soon as reasonably practicable, and in any event within six months of the completion of the interim reinstatement".
- A requirement included to give a copy of the notice of a restriction following substantial road works to those that have submitted a written request asking for a copy of any such notice.
- The requirement, in Regulations, to publish notice of proposed restrictions in newspapers has been amended to publishing on any website maintained by a street authority for providing the public with information.
- These Regulations will come into force approximately 9 months after they have been made to allow the appropriate software to be developed, training carried out and bedding-in problems resolved.
- Revised exemptions from restrictions to allow works that are required to meet statutory obligations on statutory undertakers or that do not affect the structure of the street.

Options

13. The options that were outlined in the previous consultations have now been refined in the 2007 Regulations through further deliberations of the Working Group and the consideration of Ministers. Given the new Network Management Duty for traffic authorities, which is imposed through the TMA, the Government does not believe that a "do nothing" option of leaving the existing arrangements unchanged is practical for any of the three key areas provided by the 2007 Regulations outlined below (for the reasons set out in paragraphs 7-9 (above)).

Issue 1 - Classification and notification of works

14. The following are powers to help plan and co-ordinate street works. Section 59 (NRSWA) places a duty on the street authority to co-ordinate works of all kinds in the highway with a parallel duty on undertakers to cooperate (section 60 of NRSWA). Under sections 54 and 55 (NRSWA), and the 1992 Regulations, undertakers had to give advance notice to the street authority of planned works. The 1992 Regulations divided utility works according to a series of classifications for the purpose of prescribing the length of notice required.

15. The Government considers it sensible to rationalise the existing categories to simplify the process for the companies and local authorities notifying or co-ordinating works. It also makes sense to require longer notice periods for those works that last longer and are therefore likely to have a greater impact, which provides highway authorities with more time to co-

ordinate works and identify measures to mitigate or minimise the potential disruption to road users, whether pedestrian, cyclist, bus passenger or driver.

16. The 2007 Regulations merge "special urgent", "urgent" and "emergency" into a single category - "immediate" works. Major, standard and minor works are to be retained as separate categories, although the definitions have been simplified. The proposal to create a new category of "programmed" works had been dropped following the first public consultation. The "programmed" category has been merged with the "major" category and works that would have fallen in the "programmed" category will now be subject to three months advanced noticing, as opposed to six months. These definitions, and their description and powers, are shown in table 2.

Table 2 – Description of Regimes and Works Categories (Traffic Management Act 2004)		
Previous regime & works categories	Advance notice (section 54 of NRSWA)	Notice of start of works (section 55 of NRSWA)
Emergency works	Not required	Within 2 hours of works starting
Urgent works	Not required	2 hours before proposed start in traffic sensitive streets ¹ . Not required otherwise.
Special urgent works	Within 2 hours of works starting	Within 2 hours of works starting
Major projects	1 month	7 days before proposed start
Standard works	1 month in traffic sensitive streets, not required otherwise	7 days before proposed start
Minor works	1 month where the work requires a traffic sensitive street to be excavated. Not required otherwise	7 days before proposed start where the work requires a traffic sensitive street to be excavated. 3 days if in a TS street where no excavation required. By daily whereabouts if in a non-traffic sensitive street which requires excavation.
New regime & works categories	Advance notice (section 54 of NRSWA)	Notice of start of works (section 55 of NRSWA)
Immediate works²	Not required	Within 2 hours of works starting
Major works³	3 months	10 days before proposed start
Standard Works⁴	Not required	10 days before proposed start
Minor works⁵	Not required	3 days before proposed start

Issue 2 - Directing the location of works

17. Section 56A of NRSWA was inserted by section 44 of the TMA. Where a statutory undertaker notifies a street authority (eg a county council) that it intends to carry out works to install new apparatus (eg a water main) in a specific street, the street authority can direct the undertaker not to place it in that street. NRSWA places several constraints on the use of this power to direct, namely:

¹ Streets which individual highway authorities have designated in their area as being the most likely to be disrupted by works (eg those with the highest traffic levels), and where stricter controls on works should apply.

² Either emergency works (as defined by section 52 of NRSWA) or urgent works (as defined by the 2007 Regulations).

³ Works identified in programmes, or planned at least 6 months in advance of the works date; require a temporary traffic order under the Road Traffic Regulation Act; and where the planned duration of works is 11 days or more.

⁴ Works, other than immediate or major works, where the planned duration is between 4 and 10 days inclusive.

⁵ Works, other than immediate or major works, where the planned duration is 3 days or less.

- that placing the apparatus in a street other than the one cited in the direction would avoid or reduce disruption to traffic;
- that placing the apparatus in another street would be a reasonable way to achieve the purpose for which the apparatus is to be installed (for instance it does not prevent the undertaker supplying a new electricity service to a customer located in the proposed street);
- that it is reasonable to require the undertaker not to place the apparatus in the street originally proposed.

18. At present, an undertaker is able to choose its own route when installing new apparatus to connect two points. Activating the power under s56A would provide authorities with another tool to reduce disruption on the road network by allowing them to direct a statutory undertaker not to place apparatus in a specific street if using that street is likely to cause disruption to traffic, through equipment maintenance over time once installed. However, the impact is likely to be limited, as this power can only be used in relation to the placing of new apparatus and there must be a suitable alternative route for the apparatus.

Issue 3 - Restricting works after substantial road or street works

19. The TMA extends and provides new powers for street authorities to protect streets where there have been substantial road or street works. At present, section 58 of NRSWA allows a street authority to place an embargo on utilities carrying out any street works (except certain exempted categories) in a specific street after the completion of substantial road works. The TMA amends s58 of NRSWA so that the maximum period of any embargo can be set out in regulations (section 58 previously limited this to 12 months) and under the regulations this period can be up to five years following reconstruction of a highway.

20. The TMA also creates a new section 58A and schedule 3A of NRSWA, which allows an embargo to be imposed after substantial street works. Where an undertaker notifies a highway authority that it intends to carry out works that would be substantial, the authority can decide that it would be appropriate to impose a restriction of up to twelve months on further works after the substantial works have taken place. The authority will then inform other undertakers and invite them to submit notices for proposed works in that street, so that they can be completed in advance of the restriction.

21. The new power will enable authorities to target and reduce the disruptive effect of the same road being dug up repeatedly without respite, with the accompanying damage that this may cause to the structure of the road. However, certain types of works may still take place when a restriction has been imposed. These are limited to immediate⁶ works at any time or customer connections after the first 20 days of a restriction. Even where a restriction has been imposed, an undertaker may, with the consent of the street authority, carry out works.

⁶ Either emergency works (as defined by section 52 of NRSWA) or urgent works (as defined by the 2007 Regulations).

Costs and Benefits

Sectors and groups affected

- Highway Authorities
- Local Authorities
- Statutory undertakers (includes utility Companies eg gas, electric, telecommunications, water)
- Public (road users, pedestrians, householders)
- Businesses, as road users and as frontagers

Race Equality Impact

22. These proposals do not have any race equality impacts.

Environmental impact

23. The introduction of the 2007 Regulation is intended to reduce disruption on streets. It is anticipated that by reducing congestion there will be an associated improvement in the levels of air quality, as vehicle emissions, caused by stationary vehicles, will be reduced.

24. The power provided by the 2007 Regulations for authorities to apply conditions to control activities on the street will facilitate greater co-operation between highway authorities and utilities resulting in better planning and co-ordination of street works. This in turn should result in better co-ordination of road excavations and a reduction in duration of works.

Disability Impact Assessment

25. These proposals do not have any disability impacts.

Benefits

Social and environmental benefits

26. Any activity carried out in the street has the potential to cause disruption depending upon how long it lasts, its location, its scale and how it is carried out. The benefits of being able to better control these activities are:

- reduced occupation of the road by activities helps reduce congestion and maximises the use of the existing network, improving reliability and making journeys more predictable as well as faster. This makes journeys easier to plan and reduces the amount of wasted or unproductive time;
- as congestion is reduced, pollution is also reduced, with benefits for air quality and other aspects of the environment;
- business can operate more efficiently through the quicker and more reliable delivery of goods, service of and access to customers etc;

- people are able to reach their destinations more easily, saving time and effort;
- public transport can operate more reliably and provide a better service, potentially further relieving congestion on the road by attracting motorists onto public transport.

Economic benefits

27. The key benefit to be derived will be from reduced disruption from street works on the road network and the consequential impact on road users. Two studies have been carried out in recent years to try to assess the level of disruption caused by works in the street:-

- 1 Halcrow produced a report in July 2004 for the Department, which estimated the annual costs of disruption caused by utility works in England in the year 2002/03 at some £4.3 billion.
- 2 National Joint Utilities Group ("NJUG") commissioned Professor Phil Goodwin to review Halcrow's findings. This study adopted a different approach and provided an estimate of up to £1 billion for the cost of congestion caused by street works.

28. Although there is a large variation, it does confirm that the economic cost of congestion has a significant impact on the operation of the road network.

29. The Department consider that the Halcrow calculation is the more robust because its methodology draws on a large disaggregated database of street works. It is based upon the estimated annual number of street works of 1.1 million. This figure was extrapolated from a sample of 25 local authorities' notices and validated by the statutory undertakers. Halcrow have recently revalidated the number of works, and the estimate is now some 1.2 million works a year. The number of works by sector are shown in table 3 below:

Table 3: Estimate of the number of works by utility sector a year					
	Electricity	Gas	Telecoms	Water	Total
Total	234,250	223,000	243,800	498,950	1,200,000
Source Halcrow Group					

30. Halcrow were also commissioned to consider the level of benefits that the TMA and its amendments of NRSWA could deliver. With the appropriate application of all the powers available to the street authorities, through these Regulations and other powers of direction, Halcrow consider that there could be a 10% reduction in the delay costs imposed by street works (see Annex A for more details. The benefit arising from Section 59 of NRSWA (improved coordination arising from a longer notice period as set out in regulations 8 and 9 of the Street Works (Registers, Notices, Directions and Designations) Regulations 2007) is estimated to be about 5% (valued at £214m).

Costs

31. There are no fees for statutory undertakers associated with the operation of the 2007 Regulations, although failure to comply may be a summary offence that could be dealt with by a Magistrates' Court or for certain offences with fixed penalty notices. Additional costs to undertakers are costs of administering new systems and one-off costs to implement the revised regulatory regime, in particular the system for electronic transfer of notices (EToN) and associated on-going costs.

32. Halcrow have identified costs to the utilities and local highway authorities for the implementation of the 2007 Regulations as £1.9m each, plus an additional £0.6m related to s56A. Halcrow have identified costs to the utilities and local highway authorities for the implementation of the 2007 Regulations as £2.2m each. These costs are mainly associated with the revised working practices required for the revised noticing periods by works classification.

33. NJUG members have estimated that all three regulations (including the cost of fixed penalty notices, discussed in greater detail in the Regulatory Impact Assessment for the *Street Works (Fixed Penalty Notices) Regulations*) would result in one-off costs (new computer systems and software, staff training, etc) of about £80 million, with additional on-going costs of nearly £81 million a year. These figures are based on an assumption of 2.4m works a year. The most significant costs identified by NJUG members result from increased site visits or inspections by utility companies to ensure information in notices is correct and that estimated durations are correct, along with increased labour costs.

34. The third set of regulations that NJUG have included in the cost estimates relate to Section 74 charges, which were included in the two consultations. However, the regulations for these, the *Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) Regulations*, are being revised to include an additional provision following responses to the last consultation. A further consultation on these will be launched, including a revised Regulatory Impact Assessment, which will provide greater detail.

35. Halcrow reviewed NJUG's cost estimates and believe that they are unduly pessimistic, as they do not take on board efficiencies in the simplified arrangements, and assume no changes in their working practices, even allowing for the much higher number of works at 2.4m a year. Annex B provides a detailed breakdown of NJUG's cost estimates and Halcrow's assessment carried out in response to this data.

36. Implementation of the 2007 Regulations will require changes to both undertakers and local authority computer systems to accommodate EToN (electronic transmission of notices) and the changed periods and greater co-ordination requirements. There will also be a step-change in EToN, so that in future the protocol will be based on XML web services, which replace the existing COBOL-based and be much easier to revise in the future. Any changes to the notice periods, or information requirements would have required the existing software for the EToN system to be re-written, even without the update to XML web services.

37. Whilst Halcrow accept that there will be set-up costs for the industry, particularly systems cost, they believe that the one-off £80m estimate is excessive. The Department has held a series of meetings with NJUG to try to understand their calculations, but their estimates are based on commercially sensitive information and cannot be disclosed to the Department.

38. The assumptions under-pinning Halcrow’s calculations are fairly broad, but they consider their assumptions are at the higher level of the range. The calculations are significantly less than NJUG’s, but this is partly based upon differing calculations regarding the number of works undertaken each year.

Summary of costs and benefits

39. Halcrow estimate that the increased powers from the TMA and NRSWA may provide a 10% improvement in the overall delay cost arising from street works, which, as set out in table 4, is £430m. They estimate that the 2007 Regulations could provide up to 5% savings in this overall delay cost through the benefits of the increased notice period. Even at a 2% reduction in congestion associated with street works, the benefits provided by the increased notice period would outweigh the costs. This does not include any assessment of a corresponding improvement in the operation of the local authority road works on the network that will result from better co-ordination and management of the road network.

Table 4: Comparing reduction in congestion caused by street works with costs to industry (£m)		
	Benefit	Industry Costs
1% reduction	43	80*
2% reduction	86	
5% reduction	215	
10% reduction	430	
Source: Halcrow Group		

*this figure excludes the initial set-up costs for all the street work regulations, estimated to be £81m by NJUG

40. On balance, the Government believes that the benefits that all three regulations could deliver through reduced disruption for all road users, better value for money for road maintenance expenditure and reduced negative environmental effects of utility works would outweigh the additional costs, which these impose on those carrying out works.

41. The work undertaken by NJUG indicates that there will be a significant cost to the utility sector of implementing all three regulations. This is based on an estimate of the number of works undertaken by each sector. These figures have been difficult to compile but NJUG estimate that the total number of works for their members is 2.4 million works a year. This seems high compared with figures from the earlier Halcrow study that estimated 1.1m works a year for all utility sectors. If the number of works is higher, and further validation of Halcrow’s methodology disputes this, the costs of congestion would increase. Assuming a linear relationship between the number of works, and the associated congestion, the Halcrow calculations would suggest a minimum congestion cost of £8.6 billion

Small Firms Impact Test

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

43. The smaller telecommunications companies were represented on the working group drawing up the details of the new arrangements (see consultation section below) by a nominee put forward by the UK Competitive Telecommunications Association (UKCTA).

44. Representatives of small businesses were consulted as part of the three-month public consultation on the draft proposals in 2005 and the shorter follow-up consultation in 2006.

Competition assessment

45. The Department has carried out a competition filter test on the likely effect of the 2007 regulations. The 2007 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 with each other. In the water sector, companies operate local and regional monopolies, while in the electricity sector, the distribution businesses operate on a regional basis. The gas sector has regional distribution networks that operate as regional monopolies, similar to the electricity companies. Given that, the Government does not believe that the regulations would have a significant effect on competition in any of the three sectors.

46. 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. Oftel has found that BT has Significant Market Power in these areas, with around 80% of the UK market.

47. The Department does not believe that there would be significant implications for competition in the telecommunications sector from the new arrangements. The changes to the system for classifying and notifying different works would apply to all utilities. Equally, in making use of the power to direct and restrict works after substantial works, highway authorities would be expected to deal with different utilities on a non-discriminatory basis. Some businesses may incur some additional costs in setting up new systems to improve the management of their works. Again though, this should not in itself discriminate against particular firms or new entrants, and it is unlikely that such costs will be sufficient to have implications for competition.

48. We have considered closely the competition angle in the telecommunications sector in relation to two of the proposed measures in the regulations:

- the power to restrict works; and
- the power to direct an undertaker not to locate apparatus in a specific street.

49. The first issue was discussed with utility representatives and particularly those in the telecommunications sector, as there was concern that they might work in favour of telecommunications companies that already have apparatus located in such streets and against those wishing to install their own apparatus there. As a result, the regulations provide that where an authority announces its intention to impose a restriction it must:

- inform undertakers who already have apparatus in that street, or who have announced they wish to carry out works in that street; and
- place a notice of the proposed restriction on their street works register so that other undertakers can decide to carry out any works of their own before the substantial works take place and before the restriction takes effect.

50. The second issue was that the power to direct an undertaker not to locate apparatus in a particular street might again favour those with apparatus already in place there. The Department does not believe that this would have a significant effect on competition on the basis that, usually, a particular route would not be of such significant commercial value that a requirement for a utility to consider an alternative route would affect competition. The use of the power to direct is also tightly constrained in both section 56A of NRSWA and these regulations, so that if the apparatus is to be installed to, for example, supply a building with a telecommunications link the authority would not be able to issue a direction which prevented an undertaker from providing a service to that building.

Enforcement, sanctions and monitoring review

Enforcement and sanctions

51. Prior to the TMA, NRSWA already established criminal offences under sections 51, 54, 55, 56 and 58 in respect of failure to serve a notice of street works, or carrying out works in contravention of a direction or restriction and other omissions. The TMA created new offences in relation to these sections:

- carrying out works in contravention of a direction not to carry out works in a particular street (section 56A);
- carrying out works (except in certain circumstances) in a street in which further works are restricted following substantial road works is already an offence under section 58 and now in section 58A following substantial street works (section 58A- schedule 3A);
- carrying out works before a restriction is in place in a particular street without notifying the street authority by a given date before starting the works, in section 58A (similar to offence in s58(6));
- failing to give notice to a street authority under section 55(8) of NRSWA where an earlier notice under section 55(1) ceased to have effect.

52. An undertaker found guilty of offence (iv) will be subject to a fine of up to £2,500 (level 4) or, in the case of offences (i), (ii) and (iii) £5,000 (level 5).

53. *The Street Works (Fixed Penalty) (England) Regulations 2007* provide that offence (iv) above will be a Fixed Penalty Offence. Further details of how the FPN system will operate can be found in the Regulatory Impact Assessment for the *Street Works (Fixed Penalty) (England) Regulations 2007*.

Monitoring and review

54. The 2007 regulations will improve the efficiency of street works and assist local authorities in meeting their network management duty. To ensure that the regulations are being effective, the Department will work with HAUC and other stakeholders to assess the impacts and effectiveness of the new working arrangements, arising from these regulations.

Implementation and Delivery Plan

55. The Secretary of State is making the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 to provide for better coordination of street works.

56. Copies of the Regulations and this RIA will be circulated to stakeholders. Information about the scheme will also be available on the Department's website.

57. The SI will take effect on 1 April 2008 which provides a 38 week preparation period to allow the industry to familiarise itself with the regulations.

Post Implementation Review

58. In the past, the Government has undertaken periodic reviews of all the codes of practice under NRSWA and their accompanying regulations. The Government has appointed a team to monitor the operation of the new regime under the TMA, in particular reviewing the 2007 Regulations and the accompanying Code of Practice, and the initial work to gather baseline data will be carried out before these regulations and the accompanying code come into force.

Summary and recommendation

59. The Government is committed to reducing congestion across the road network, and to realising the economic, social and environmental benefits that this brings.

60. The 2007 Regulations will:

- improve traffic flow, by simplifying the works notifying and co-ordinating process and requiring longer notice periods for those works that last longer (and are therefore likely to have a greater impact), providing highway authorities more time to co-ordinate works and identify measures to mitigate or minimise the potential disruption to road users.
- Provide authorities with another tool to reduce disruption by allowing them to direct a statutory undertaker not to place apparatus in a specific street if using that street is likely to cause disruption (provided there is a suitable alternative).
- Enable authorities to target and reduce the disruptive effect of the same road being dug up repeatedly without respite, with the accompanying damage that this may cause to the road structure.

61. The administrative cost of these regulations is estimated at £3.8m for both the utilities and local highway authorities.

62. The costs and benefits detailed in this assessment, and summarised in Table 5, are indicative but based on thorough assessment of the impact of these regulations. The

Department will also be evaluating the impact of the TMA, including these regulations, following implementation and baseline data will be collected beforehand.

63. It is recommended that the 2007 Regulations be brought in to update and strengthen the powers for highway authorities to control utility works in order to minimise unnecessary disruption to road users and local residents and business.

Table 5 - Summary of costs and benefits		
Option	Total benefit a year (£m)	Total costs a year (£m)
a. Do nothing	0	0
b. The 2007 Regulations	96.9	4.4 (Including 3.8 Administration Cost)

Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed Rosie Winterton

Date 10th July 2007

Contact point

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Regulatory Impact Assessment: The Street Works (Fixed Penalty) (England) Regulations 2007

Title of Proposal

1. The Street Works (Fixed Penalty) (England) Regulations 2007.

Purpose and intended effect

Objectives

- 2. The objectives of the Street Works (Fixed Penalty) (England) Regulations 2007 (“the FPN Regulations”) are to:
 - ensure that local authorities receive better quality information to provide for the better co-ordination of street works;
 - encourage greater compliance with the various duties and obligations under Part 3 of New Roads and Street Works Act 1991 (NRSWA), especially with respect to notices.

Background

- 3. The utility companies provide an essential service. They deliver and maintain some of the most important infrastructure, including power, gas, water and telecommunications. Most of these utilities make substantial use of the street, or rather the ground underneath it, for their distribution networks. These activities can lead to disruption and delay to all street users; the public (pedestrians and motorists), businesses, and public transport.
- 4. The Secretary of State for Transport proposes to introduce a fixed penalty notice ("FPN") scheme in England through the FPN Regulations for a range of statutory duties and obligations relating to notices for street works. The noticing system, established under NRSWA, requires utilities to give notice of proposed street works to the local street authority. These Regulations form part of the Traffic Management Act 2004 (TMA) powers to improve coordination and ensure that these street works are carried out in a timely and efficient manner.
- 5. The existing legislative framework for controlling activities in the street is contained in NRSWA and the TMA. Table 1 identifies the relevant legislative framework for the introduction of the FPN scheme.
- 6. Two types of bodies will be affected by the FPN Regulations: (i) the 150 highway authorities (county councils, London boroughs, unitary authorities and Metropolitan Borough Councils, Transport for London, and the Highways Agency), and (ii) some 200 utilities who have the right to carry out works in the street.

Table 1 – NRSWA/TMA for street works - statutory duties and offences

Legislation	Relevance to street-works
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<p>New Roads and Street Works Act 1991 (NRSWA)</p>	<ul style="list-style-type: none"> ■ Provides legislative framework for controlling activities in the street; the details are set out in guidance and regulations; ■ S59 of NRSWA places a duty on the street authority to co-ordinate highway works and S60 places a duty on undertakers to co-operate in this process; ■ Part 3 of NRSWA details a range of statutory duties and obligations and the offences relating to the noticing system; ■ offences against these obligations and duty can be prosecuted in the Magistrates' Courts.
<p>Traffic Management Act 2004 (TMA)</p>	<ul style="list-style-type: none"> ■ provides a revised and updated legislative framework for controlling activities in the street; ■ provides a network management duty on local traffic authorities to manage their road networks to facilitate the expeditious movement of traffic; ■ management of street works and highways works as one of the aspects of the network management duty; ■ part 3 of the TMA contains provisions for permit schemes; ■ details of the legislative framework are set out in guidance and regulations; ■ increased maximum level of fines for many offences under NRSWA either level 4 or level 5 (maximum fine £2,500 or £5,000); ■ provides for certain offences under Part 3 of NRSWA to become fixed penalty offences and enables regulations to be made in relation to them.

Rationale for government intervention

7. The noticing system is an essential tool for the better management of street works. The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 will improve both the current noticing arrangements and specification of data. The Secretary of State is making the FPN Regulations, to enforce the noticing system, because:

- information provided to street authorities by undertakers in various notices under NRSWA is crucial for the authorities' exercise of both their co-ordination duty (s59 NRSWA) and the Network Management Duty;
- many notices currently do not contain accurate information and are not provided within the prescribed timeframes, making it difficult for authorities to fulfil their duties, particularly that to coordinate works in the street;

- under NRSWA, offences related to the noticing system could be prosecuted in the Magistrates' Courts. However, there was a relatively low prosecution rate as the costs for the Authority in taking a prosecution to Court are high compared to the fines and level of costs awarded;
- the Government believes that a failure to improve the process of enforcement vis-à-vis notices could undermine the TMA street works legislation.

8. The Government believe that do-nothing is not an option. The strengthening of powers for local street authorities to enforce the noticing system will reduce the impact of street works on road users, and congestion. It will also enhance the ability of local street authorities to fulfill the network management duty.

Consultation

Within Government

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

Public consultation

10. The Department for Transport ("the Department") launched its second consultation, on the detailed provisions under Part 4 of the TMA: The FPN Regulations, on 12 October 2006. The consultation closed on 23 November 2006. Hard copies of the documentation were sent to 697 key stakeholders. In total, 208 responses were received via post and email to this consultation.

11. As a result of the consultation, the FPN Regulations will come into force 6 weeks after those related to noticing, to allow bedding in problems to be resolved without the threat of FPNs.

Options

12. The options were to do nothing or to improve the enforcement of the obligations set out in Part 3 of NRSWA. Paragraphs 7 and 8 provide the justification for providing a Fixed Penalty Notice scheme. The FPN regime has been refined since the previous consultation, and through working group discussion. The FPN Regulations set out the FPN scheme. The principles of the scheme are:-

- it is up to the street authority to decide whether an offence has been committed and whether the giving of an FPN is the most appropriate action;
- FPNs are not intended to provide surplus revenue. The street authority should therefore not plan for any net proceeds emerging from this scheme.

- it is the responsibility of the undertaker to manage the process of complying with the statutory duties and obligations under Part 3 of NRSWA.
- an FPN will be given to the undertaker promoting the works and not to any contractors who carry out the works.
- the TMA sets a maximum fixed penalty of 30% of the maximum fine for each offence - £750 in the case of level 4 offences. Following discussions with the Home Office and considering comparisons of the fixed penalty amounts for other level 4 offences, the FPN Regulations provide a fine of £120 with a discounted amount of £80, as shown in Table 2.
- if the undertaker pays either the full penalty or the discounted amount, as appropriate, then no further proceedings can be taken against the undertaker for the offence.
- if the undertaker does not pay the penalty within the 36 days, as extended where appropriate, the street authority may bring proceedings in the Magistrates' Court for the original offence.
- once an FPN has been given no proceedings for the offence may be commenced against the undertaker until the end of the period for payment of the penalty.

Table 2 – Fixed Penalty Scheme			
Offence	Maximum Court fine	Full FPN amount	Discounted FPN amount
An offence under section 54 (5)	Level 4 (£2,500)	£120	£80
An offence under section 55 (5)			
An offence under section 55 (9)			
An offence under section 57 (4)			
An offence under section 70 (6) consisting of a failure to comply with subsection (3) or (4A)			
An offence created by regulations made under section 74 (7B)			
An offence created by regulations made under section 74A (11)			
<p>No legal proceedings will be commenced if the full penalty amount of £120 is paid within 36 calendar days beginning with the day on which the FPN was given. This period may be extended by the street authority if they consider it appropriate.</p> <p>The discounted amount of £80 is applicable if payment is made before the end of the period of 29 calendar days beginning with the day on which the FPN was given.</p>			

Costs and Benefits

Sectors and groups affected

- Highway Authorities
- Local Authorities
- Utility Companies (gas, electric, telecommunications, water)
- Public (road users, pedestrians, householders)
- Businesses, as road users and as frontagers

Race Equality Impact

13. These proposals do not have any race equality impacts.

Environmental impact

14. The introduction of the FPN Regulations are intended to contribute to the reduction of disruption on streets by better co-ordination of road excavations and a reduction in duration of

works. By reducing congestion there will be an associated improvement in the levels of air quality, as vehicle emissions, caused by stationary vehicles, will be reduced.

Disability Impact Assessment

15. These proposals do not have any disability impacts.

Benefits

Social and environmental benefits

16. Any activity carried out in the street has the potential to cause disruption depending how long it lasts, its location, its scale and how it is carried out. The benefits of being able to better control these activities are:

- reduced occupation of the road by activities helps reduce congestion and maximises the use of the existing network, improving reliability and making journeys more predictable as well as making them faster. This makes journeys easier to plan and reduces the amount of wasted or unproductive time;
- as congestion is reduced, pollution is also reduced, with benefits for air quality and other aspects of the environment;
- business can operate more efficiently through the quicker and more reliable delivery of goods, service of and access to customers;
- people are able to reach their destinations more easily, saving time and effort;
- public transport can operate more reliably and provide a better service, potentially further relieving congestion on the road by attracting motorists onto public transport.

Economic benefits

17. The FPN Regulations 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 TMA.

18. The key direct benefit of the FPN regulations is the reduction in costs to local street authorities of enforcing the noticing system. Under NRSWA the offences detailed in these Regulations would have to be prosecuted in the Magistrate's Court and, following the latest consultation, Halcrow have estimated this would cost local street authorities £4.9m⁷ compared to £1.8m if FPNs could be given for the same offences. Therefore the provisions in the FPN Regulations will provide an estimated saving of £3.2m. The details of these costs are detailed in Table 3.

Table 3 - Halcrow's estimate of net benefit of FPN vs Prosecution		
	Prosecution	FPN

⁷ Based on 150 street authorities completing four prosecutions against the five main utility companies operating in their area per year. This is estimated to be sufficient to force a change in behaviour.

Cost of gathering evidence ⁸	£540,000	£540,000
Cost of preparing action ⁹	£1,080,000	£1,080,000
Cost of proceedings ¹⁰	£3,240,000	
Cost of giving FPNs		£67,500
Successful prosecution - Level 4 fine (cost to Statutory Undertaker) ¹¹	£3,000,000	
Successful Prosecution - Level 4 fine (benefit to society)	-£3,000,000	
FPN Charge (cost to Statutory Undertaker)		£252,000
FPN Charge (income to local street authority)		-£252,000
Cost of administering income	£67,500	£67,500
	£4,927,500	£1,755,000
Net Benefit of FPN vs prosecution	£3,172,500	

19. The key indirect benefit to be derived will be from reduced disruption from street works on the road network and the consequential impact on road users. Two studies have been carried out in recent years to try to assess the level of disruption caused by works in the street:

1) Halcrow produced a report in July 2004 for the Department, which estimated the annual costs of disruption caused by utility works in England in the year 2002/03 at some £4.3 billion.

2) National Joint Utilities Group ("NJUG") commissioned Professor Phil Goodwin to review Halcrow's findings. This study adopted a different approach and provided up to a £1 billion estimate for the cost of congestion caused by street works.

20. Although there is a large variation, it does confirm that the economic cost of congestion has a significant impact on the operation of the road network.

21. The Department considers that the Halcrow calculation is the more robust because its methodology draws on a large disaggregated database of street works. It is based upon the estimated annual number of street works of 1.1 million. This figure was extrapolated from a sample of 25 local authorities' notices and validated by the statutory undertakers. Halcrow have recently revalidated the number of works and the estimate is now some 1.2 million works a year. The number of works by sector are shown in table 4:

	Electricity	Gas	Telecoms	Water	Total
Total	234,250	223,000	243,800	498,950	1,200,000
Source Halcrow Group					

⁸ Based on half a person day at £180.

⁹ Based on one person day at £360.

¹⁰ The cost of the legal teams of both the street authority and utility, assumed to be 3 hours for each side at £180/hour.

¹¹ This is based on the assumption that the Courts realistically impose around 40% of the maximum level four fine, or £1000 on average.

22. Halcrow were also commissioned to consider the level of benefits that the TMA and amendments to NRSWA could deliver through its street works legislation. With the appropriate application of all the powers available to the street authorities, through these Regulations and other powers of direction, Halcrow consider that there could be a 10% reduction in the delay costs imposed by street works (see Annex A for more details). The benefit arising from Section 59 of NRSWA (improved coordination arising from a longer notice period as set out in regulations 8 and 9 of the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007) is estimated to be 5% (valued at £97m).

23. The increased likelihood of enforcement, due to the reduced costs involved, will therefore encourage greater compliance with the noticing regulations, ensuring that the associated benefits are realised.

24. Ultimately, should the FPN system be successful, the number of FPNs should decrease proportionately to the increase in notice compliance as shown below.

Costs

25. Undertakers will only incur FPN charges if they commit fixed penalty offences. These costs are, therefore, avoidable.

26. It is not possible to predict how many FPNs will be given. There will be variations amongst differing authorities and according to the performance of the different utility companies. Work carried out by Halcrow following the latest consultation suggests that the number of FPNs given by authorities will be significantly less than previously estimated, about 3000 per year¹². This follows closer examination of the FPN Regulations and the associated Code of Practice, which advises that an FPN should only be given for an offence where the authority is satisfied that it could successfully take forward a prosecution if necessary. Halcrow therefore believe that FPNs are unlikely to be given at the rate previously estimated (90,000 per year). This means the potential cost to undertakers of FPNs would be £252,000.

27. This revised estimate is believed to be sufficient for local street authorities to demonstrate their intent and achieve the desired behaviour change in statutory undertakers.

28. Table 5 shows a range of scenarios that result in different costs: the accepted scenario that will result in FPN charges of £252,000; the previous estimate of £7.62m¹³; and the National Joint Utilities Group (NJUG) assumption of £72 million¹⁴.

¹² Based on 150 street authorities giving four FPNs to the five main utility companies operating in their area per year. This is estimated to be sufficient to force a change in behaviour.

¹³ Based on 1.2m works a year, with five notices for each set of works, with an error rate of 3% and 50% of FPNs being applied with 90% of those served paying at the discounted rate.

¹⁴ Based on 2.4m works (higher volume of work), an error rate of 5% with all FPNs applied and paid at the full rate.

29. As mentioned in paragraph 18, local street authorities should experience a cost reduction from the FPN Regulations, although FPNs should not be automatically generated and authorities should still be expected to have sufficient confidence, and therefore information, that they will be able to take forward a prosecution successfully if necessary.

Issues of Equity and Fairness

30. The penalty amount has been set so that it can act as a deterrent. The level of £120 (£80 discounted amount) is significantly below the maximum of £750 that could have been set for these seven offences (30% of a level 4 fine).

31. The FPN system will be applicable to all utility companies (electricity, gas, water and telecommunications) and to section 50 licensees. From the groups affected, it is possible that the impact on section 50 licensees could be greater than the impact on the utility companies.

Table 5 – Halcrow’s estimates of FPN costs to statutory undertakers			
Assumption/Factor/Result	All Sectors	All Sectors	All Sectors NJUG assumptions
Number of Works per Month	100,000	100,000	200,000
Number of Works per Year	1,200,000	1,200,000	2,400,000
Number of Notices per Works	5	5	5
Number of Notices	6,000,000	6,000,000	12,000,000
Error Rate	1%	3%	5%
Number of Notices in Error	60,000	180,000	600,000
Percentage of FPNs applied	5%	50%	100%
FPN Rate	£84 (90% discounted)	£84 (90% discounted)	£120
Total Charge	£252,000	£7,560,000	£72,000,000

Summary of costs and benefits

32. In analysing the additional costs and benefits of the proposed FPN scheme it is useful to consider the cost/benefit case based on a ‘do nothing’ option of taking the prosecution route and examining the differences the FPN route will offer. Taking this approach, we can discount costs that are ‘common’; for example, the cost of collecting sufficient information to pursue a prosecution would be common to both approaches. In respect of the overall cost/benefit to society, the FPN charges and the cost of fines under the prosecution route can also be disregarded as in both cases there is no net cost, or benefit, to society.

33. The costs and benefits that are therefore significant are the court costs incurred when a prosecution is pursued versus the administrative burden of managing an FPN scheme. The Department accepts Halcrow’s suggestion that four actions per year per utility per local street authority will be sufficient to force the desired change in behaviour, meaning the net benefit to society will be in the order of £3.2m.

34. The Government also believes that the regulations could deliver benefits through reduced disruption for all road users and reduced negative environmental effects of utility works.

35. The Government intends to review the operation of the new arrangements after the regulations have been in force for two years, to ensure that the right balance has been struck between costs and benefits, and to see whether any changes may be needed.

36. It should also be borne in mind that, should a FPN system be successful, the number of FPNs should decrease proportionately to the increase in notice compliance.

Small Firms Impact Test

37. The impact on small businesses should be minimal, as the introduction of the FPN scheme will predominantly affect street authorities and utilities i.e. water, gas, electricity and telecommunications.

38. The FPN system means that the penalty is given to the undertaker promoting the works as they have the duty to comply with NRSWA. This scheme may therefore have consequential implications for contractors if the undertakers pass on the costs of the FPNs paid.

39. The smaller telecommunications companies were represented on the working group drawing up the details of the FPN system (see consultation section below) by a nominee put forward by the UK Competitive Telecommunications Association.

40. Representatives of small businesses were consulted as part of the three-month public consultation on the draft proposals in 2005 and the shorter follow-up consultation in 2006.

Competition Assessment

41. It is not expected that the proposed FPN scheme will have a significant impact on competition. All undertakers are subject to the same regime. However, particularly in the telecommunications field, the impact of the regime may be felt disproportionately. This is because of the domination of the field by a few large companies, with the remaining companies being relatively small. Nevertheless, the costs imposed are avoidable as they will only be incurred if the undertaker fails to comply with the duties and obligations placed upon them by the legislation.

42. It is also possible that some businesses may incur greater costs in setting up new systems to improve the management of their works. However, it is unlikely that such costs will be sufficient to have implications for competition.

Enforcement, Sanctions and Monitoring

43. The responsibility for the FPN scheme resides with the street authorities. They retain the power to take an alleged offender to the Magistrates' Court instead of giving an FPN.

Implementation and Delivery Plan

44. The Secretary of State is making the Street Works (Fixed Penalty) (England) Regulations 2007 to provide improved enforcement of the obligations and duties relating the noticing system arising from Part 3 of NRSWA

45. Copies of the Regulations and this RIA will be circulated to stakeholders. Information about the scheme will also be available on the Department's website.

46. The FPN Regulations will take effect on 12 May 2008 which provides a 44 week preparation period to allow the industry to familiarise itself with the regulations.

Post Implementation Review

47. The Government intends to conduct a review within 2 years of the regulations coming into force to assess the efficacy of the fixed penalty notice scheme. The precise remit of the review is still to be agreed. However it is likely that it will include an examination of the costs of running the FPN scheme, the number of FPNs being given, the level of the penalty for each offence and the benefits arising from the scheme such as any improvement in the quality of notices being given, any improvement in co-ordination and any reduction in the levels of disruption.

48. If desired, the Secretary of State may make an order providing for offences under Part 3 of NRSWA relating to any street works to become (or cease to be) fixed penalty offences (subject to resolution of each House of Parliament).

Summary and recommendation

49. The Government is committed to reducing congestion across the road network, and to realising the economic, social and environmental benefits that this brings.

50. Under NRSWA, offences related to the noticing system can be prosecuted in the Magistrates' Courts. However, there is a relatively low prosecution rate because the costs for the Authority in taking a prosecution to Court are high compared to the fines and level of costs awarded. The FPN Regulations provide an alternative that is less costly for both sides and a more constructive way of dealing with these offences, however prosecution through Magistrates' Court is still a possibility.

51. However, the saving in costs of FPNs versus prosecution is estimated to be £3.2m. This will increase the likelihood of enforcement and drive a behaviour change that will contribute to improved traffic flow, by improving the quality and timeliness of information provided to street authorities by undertakers in the various notices under NRSWA. Thus better equipping street authorities to fulfil their network management duties and co-ordinate works and identify measures to mitigate or minimise the potential disruption to road users. If this does not happen, it could undermine the TMA legislation.

52. The Government also believes that the regulations could contribute to the delivery of benefits through reduced disruption for all road users and reduced negative environmental effects of utility works. The Government intends to review the operation of the new arrangements after the regulations have been in force for two years, to ensure that the right balance has been struck between costs and benefits, and to see whether any changes are required.

53. The costs and benefits detailed in this assessment, and summarised in Table 6, are indicative but based on thorough assessment of the impact of these regulations. The Department will also be evaluating the impact of the TMA, including the FPN Regulations, following implementation and baseline data will be collected beforehand.

54. It should also be borne in mind that, should an FPN system be successful, the number of FPNs should decrease proportionately to the increase in notice compliance.

55. It is therefore recommended that the FPN Regulations be brought in to strengthen the powers for local street authorities to enforce the noticing system and therefore reduce the impact that street works impose on road users and congestion.

Table 6 - Summary of costs and benefits		
Option	Total benefit per annum	Total costs per annum
a. Do nothing	-	£4.9m
b. Provision of FPN scheme, for the enforcement of Part 3 NRSWA	£3.2m - Saving versus prosecution Total - £3.2m	£1.76m Total - £1.76m

Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed Rosie Winterton

Date 10th July 2007

Contact point

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Annex A

Calculations of Potential Road User Delay Savings Arising from Street Works

Background

Part of the underlying rationale of both the New Roads and Street Works Act 1991 (NRSWA) and the Traffic Management Act 2004 (TMA) is that coordination and cooperation will improve the efficiency of street works. Occupation of road space by utility companies, developers and the authority's themselves is inevitable. The TMA affords street authorities the opportunity to improve the coordination of works through better liaison arrangements, more effective coordination meetings and, where necessary, the more robust use of the powers available to them. An example of how improved coordination will be aided is the increased notice periods for planned works (section 59 of the TMA).

Consultants, Halcrow, were commissioned to provide an estimate of the potential for reducing the road user delay arising from utilities street works. This commission considered the use of all powers for local street authorities to manage street works arising from NRSWA and TMA. To undertake this assessment, Halcrow assumed that delay is directly proportional to traffic flow thus enabling a simple estimate of delay saving to be made. As a base assumption the 'traffic distribution by time of day on all roads', from the Department for Transport's 2005 transport statistics, has been used (as set out in table 1A). Whilst this may be a simplistic approach it does indicate the potential savings that may potentially be achieved through proper application of the powers.

Available powers

There are a range of specific powers available to local street authorities enabling them to take measures to ensure that delay arising from street works is kept to a minimum. The specific powers considered are:

1) Section 56 – power to give directions as to the timing of street works

This provision gives the street authority the power to direct the timing of street works both in respect of the time of the day and days of the week. Halcrow considered four different scenarios for changing working periods; (1a) shift the working day forward by one hour, (1b) shift the working day forward by two hours, (1c) move to night time working, and, (1d) move to restricted night time working. These scenarios are summarised in table A1, against the potential delay saving benefit:

Table A1 – Timing of works/delay saving benefit							
Scenario	Planned Occupation			Directed Occupation			Delay Saving Benefit
	Working Time Period	Total Traffic Flow	Traffic	Working Time Period	Total Traffic Flow	Traffic	
(1a)	08:00 to 17:00	58.1 %		07:00 to 16:00	57.3 %		0.8 %
(1b)	08:00 to 17:00	58.1 %		06:00 to 15:00	54.2 %		3.9 %
(1c)	08:00 to 17:00	58.1 %		21:00 to 06:00	9.4 %		48.8 %
(1d)	08:00 to 17:00	58.1 %		00:00 to 05:00	2.6 %		55.5 %

In respect of the directions on timing it has been assumed that a significant number of directions could be given to shift the time of works by an hour to avoid specific peak flows. Halcrow estimate that one in 5 works could be directed in this way. A more significant

direction of two hours could perhaps be applied to a further 10% of works. In respect of directing works to be undertaken outside the daytime period there is less scope for this and Halcrow estimate that only 3% of works could be directed to be undertaken at night with a further 1% being directed to be undertaken in a restricted night-time period (commencing after midnight). Clearly such directions would only be applied on the busiest of streets.

2) Section 56A - powers to give directions as to placing of apparatus

This provision gives the street authority the power to direct that apparatus is not placed in a street where disruption to traffic would be avoided by doing so. Halcrow consider that directing undertakers not to place apparatus in a street will only be applicable in a particular set of circumstances. There is little evidential basis for making an assessment and Halcrow estimate that 1 in 10,000 works could potentially be directed in such a way.

3) Section 66 - avoidance of unnecessary delay or obstruction

This provision gives the street authority the power to require an undertaker to mitigate or discontinue the disruptive effects of street works. This is perhaps one of the least well applied provisions of NRSWA. There are two specific scenarios for the use of this power that Halcrow considered;

(3a) requiring an undertaker to expedite works by working continuously until they are complete; and

(3b) requiring road space to be given back to other road users when works are not being executed.

In the first scenario it is difficult to estimate the potential delay saving benefit however it is recognised that works sites are often left unattended for long periods of time between the different aspects of work being undertaken, for example, one gang will set up the traffic management, another gang will excavate, another gang will come along and undertake the repair, and so on. It is clear that a substantial number of works are left with signing and guarding in place but no activity actually taking place.

Halcrow believe that a reduction of 10% in works duration could be achieved through use of powers available under Section 66 of NRSWA requiring undertakers to expedite their works and that this could be applied to a quarter of all works.

In respect of giving road space (capacity) back to traffic, a simple scenario has been considered where the traffic management is removed at the end of each working day and replaced at the start of the following working day. Using the traffic flow distribution discussed above it can be seen that, based on the removal of the restriction in capacity from 17:00 in the evening to 08:00 in the morning, a potential delay saving benefit of 41.9% can be achieved. But these arrangements could only be applied to around 3.6% of works. This approach could be taken on 10% of all footway and verge works, which represent approximately 35.7% of all street works.

4) Section 74 - charge for occupation of the highway where works unreasonably prolonged

These powers are already being used extensively by street authorities although it is recognised that the powers could be better used. For the purposes of this Annex it is assumed 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. Halcrow

estimate that the provisions could be better applied in respect of 22.6% of works undertaken (this is the percentage of works to which the section 74 charging scheme is to apply).

5) Better opportunities exist to coordinate works through the provision of extended notice periods

Halcrow believe there will be a clear benefit to the management and coordination of street works through the longer notice periods for the different categories of work. The increased notice periods for all planned works will offer street authorities greater opportunity to coordinate the proposals of undertakers with their own programme of works and other activities of which they are aware. It will also provide undertakers with greater opportunity to coordinate and cooperate with each other in respect to site or trench sharing opportunities. The three month advance notice period for major works and the three day notice for minor work provide the street authority more opportunity to coordinate and, when necessary, to issue a direction on timing to the undertaker. Halcrow estimate that a reduction in delay in the range of 5%-10% could be achieved in respect of the extended notice period.

Summary of Potential Delay Savings

Table A2: benefits arising from NRSWA/TMA powers					
Power	Scenario	Potential Saving	Applicability	Total Benefit	Value p.a. (cost of delay (£4.30bn))
Section 56	Scenario (1a) - Direct Timing	0.8 %	20.0 %	0.16 %	£6.9m
	Scenario (1b) - Direct Timing	3.9 %	10.0 %	0.39 %	£16.8m
	Scenario (1c) - Direct Timing	48.8 %	3.0 %	1.46 %	£62.8m
	Scenario (1d) - Direct Timing	55.5 %	1.0 %	0.56 %	£24.1m
Section 56A	Scenario (2) - Direct Location	50.0 %	0.01 %	0.005 %	£0.2m
Section 66	Scenario (3a) - Expedite Works	10.0 %	25.0 %	2.50 %	£107.5m
	Scenario (3b) - Regain Capacity	41.9 %	3.6 %	1.50 %	£64.5m
Section 74	Scenario (4) - Reduce Overruns	5.0 %	22.6 %	1.13 %	£48.6m
Section 59	Improved Coordination	5.0%	38.4 %	1.92%	£96.7m
Total					£428.1m

It can be seen that by factoring the potential saving by the applicability of the powers discussed an estimated total delay saving benefit of in excess of 7.7% can be achieved against the delay costs. If the improved coordination is also taken into account, a total delay saving benefit of nearly 10% may be achieved. Halcrow consider that this is a conservative estimate of the range of potential delay savings.

It should be noted that, with the exceptions of the enhanced co-ordination powers and those available under Section 56A, all of the powers discussed above are available to street authorities now and have been available for some time. The use of these powers may be refocused and refreshed following the implementation of the TMA and particularly the introduction of the Network Management Duty on local traffic authorities.

It is of course important to consider the additional costs to utility companies arising from the more pro-active use of powers by street authorities. However, by taking a cooperative approach and working closely with street authorities utility companies should be able to keep additional works costs to an absolute minimum. Ultimately, if utilities take into account traffic disruption as part of their planning process there will be little or no need for street authorities to apply the interventions discussed above.

Annex B

Table B1 - NJUG's Assessment of Increased Site Visits for Notices, Inspections for Section 74, Coordination Costs and Section 56 Costs					
	Electricity	Gas	Telecoms	Water	Totals
NJUG estimates a year	£53,760,000	£9,150,000	£11,836,270	£47,938,000	£122,684,270
NB NJUG estimate based upon 2.4m works a year					

Table B2 - Halcrow's Assessment of Increased Site Visits for Notices, Inspections for Section 74, Coordination Costs and Section 56 Costs					
	Electricity	Gas	Telecoms	Water	Totals
Works a year	234,257	223,009	243,786	498,949	1,200,001
Increased Cost of Co-ordination					
Assume 5% of works require additional co-ordination	11,712.87	11,150.43	12,189.28	24,947.43	60,000
Assume 1 hour required in each case (at £32h)	£374,812	£356,814	£390,057	£798,318	£1,920,000
Increased Site Visits to provide Notice Data (Section 66)					
Assume 10% require visit	23,426	22,301	24,379	49,895	120,000
Assume ½ man day per visit	11,713	11,150	12,189	24,947	60,000
Assume £250 per man/day	£2,928,216	£2,787,608	£3,047,319	£6,236,857	£15,000,000
Increased Inspections for Section 74					
Assume 1 work = 1 inspection unit	234,257	223,009	243,786	498,949	120,000
Sample inspection increase (10%)	23,425.73	22,300.86	24,378.55	49,894.86	120,000
Cost of inspection (at £24)	£562,218	£535,221	£585,085	£1,197,477	£2,880,001
Improved Planning	£5,655,000	£5,394,000	£5,887,000	£12,064,000	£29,000,000
Increased costs as a result of S56					
Number of works effected (0.34%)	796	759	828	1697	4,080
Additional cost (assume average £5k)	£3,978,000	£3,794,400	£4,141,200	£8,486,400	£20,400,000
TOTALS	£13,498,246	£12,868,033	£14,050,661	£28,783,052	£69,200,001