

2012 No. 2272

HIGHWAYS, ENGLAND

**The Street Works (Charges for Unreasonably Prolonged
Occupation of the Highway) (England) (Amendment)
Regulations 2012**

<i>Made</i>	- - - -	<i>2nd September 2012</i>
<i>Laid before Parliament</i>		<i>6th September 2012</i>
<i>Coming into force</i>	- -	<i>1st October 2012</i>

The Secretary of State for Transport makes the following Regulations in exercise of the powers conferred by sections 74 and 104(1) of the New Roads and Street Works Act 1991(a):

Citation and commencement

1. These Regulations may be cited as the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) (Amendment) Regulations 2012 and come into force on 1st October 2012.

Amendment of Regulations

2. The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009(b) are amended as follows.

Interpretation

3. In regulation 3—

- (a) in the definition of “bridleway” etc, insert ““carriageway”,” before ““footpath””; and
- (b) in each of the definitions of “minor works” and “standard works”, omit “, save as provided in regulation 9(8),”.

Prescribed charges

4. For regulation 9 substitute—

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- (a) 1991 c.22. Section 74 was amended by the Transport Act 2000 (c.38), sections 256 and 274, Schedule 31, Part V and by the Traffic Management Act 2004 (c.18), sections 40(4) and 52. Sections 54, 55 and 57 were amended by the Traffic Management Act 2004, sections 40, 49, 51(1) and 52(2), Schedule 1. The functions of the Secretary of State under sections 74 and 104 are, so far as exercisable in relation to Wales, vested in the Welsh Ministers. Those functions were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), article 2, Schedule 1. By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c.32), they were transferred to the Welsh Ministers.
 - (b) S.I. 2009/303. There is an amendment to these Regulations which is not relevant.

“Prescribed charges

9.—(1) Subject to paragraphs (2), (10) and (11), an undertaker executing street works in a highway to which these Regulations apply shall pay the highway authority a charge to be determined in accordance with paragraphs (3) to (9).

(2) Paragraph (1) shall not apply to—

- (a) works which do not involve breaking up the street or tunnelling or boring under it, and which take place—
 - (i) in a street which is neither a traffic-sensitive street nor a protected street;
 - (ii) in the footway of a traffic-sensitive street at a traffic-sensitive time;
 - (iii) in the footway of a protected street(a) at any time; or
 - (iv) in a traffic-sensitive street, other than at a traffic-sensitive time;
- (b) works consisting only of the creation of holes of less than 3 centimetres in diameter, for investigatory purposes;
- (c) replacing poles, lamp columns or signs in the same location; or
- (d) pole testing.

(3) Subject to paragraph (7), the charge shall be of an amount calculated in accordance with paragraph (4) or, as the case may be, paragraph (5) and shall be payable for each day, or part of a day, by which the duration of the works exceeds the longer of—

- (a) the prescribed period, or
- (b) a reasonable period(b).

(4) If, during a period of overrun, the works take place in any part of the carriageway, the amount of the charge, in relation to the description of street in column 2 of an item in column 1 of Table 1, is—

- (a) the amount specified in column 3 of that item for each of the first three days; and
- (b) such further amount as is specified in column 4 of that item for each day after that.

Table 1

Charges in relation to works occupying the carriageway during period of overrun.

<i>(1) Item</i>	<i>(2) Description of street</i>	<i>(3) Amount (£)(each of first three days)</i>	<i>(4) Amount (£) (each subsequent day)</i>
1.	Traffic-sensitive street or protected street not in road category 2, 3 or 4.	5000	10000
2.	Other street not in road category 2, 3 or 4.	2500	2500
3.	Traffic-sensitive street or protected street in road category 2.	3000	8000
4.	Other street in road category 2.	2000	2000
5.	Traffic-sensitive street or protected street in road category 3 or 4.	750	750
6.	Other street in road category 3 or 4.	250	250

(a) “Protected street” is to be construed in accordance with sections 61 and 62 of the New Roads and Street Works Act 1991 (“the 1991 Act”).

(b) “A reasonable period” is to be construed in accordance with section 74(2) of the 1991 Act..

(5) If, during a period of overrun, the works do not at any time take place in any part of the carriageway, the amount of the charge, in relation to the description of street in column 2 of an item in column 1 of Table 2, is the amount specified in column 3 of that item.

Table 2

Charges in relation to works outside the carriageway during period of overrun.

<i>(1) Item</i>	<i>(2) Description of Street</i>	<i>(3) Amount (£) (each day)</i>
1.	Street not in road category 2, 3 or 4.	2500
2.	Street in road category 2.	2000
3.	Street in road category 3 or 4.	250

(6) In this regulation—

“description of street” means the description of the street on the date when—

- (a) the undertaker first gave notice under section 54(1), 55(1) or 57(2) of the New Roads and Street Works Act 1991, or notification under paragraph 2(1)(d) of Schedule 3A to that Act^(a), in respect of the works; or
- (b) the undertaker first applied for provisional advance authorisation or a permit in respect of the works;

“period of overrun” means the part of the duration of the works which exceeds the longer of the prescribed period or a reasonable period; and

“provisional advance authorisation” has the same meaning as in the Traffic Management Permit Scheme (England) Regulations 2007.

(7) The charge will consist of a single payment of £100 in the circumstances set out in paragraph (8) if the requirements of paragraph (9) are met.

(8) The circumstances referred to in paragraph (7) are that—

- (a) subject to sub-paragraph (c), the undertaker has—
 - (i) completed interim reinstatement, or as the case may be permanent reinstatement, of the highway,
 - (ii) endeavoured to remove all signing, lighting and guarding, and
 - (iii) removed all remaining spoil, unused materials and other plant;
- (b) but for paragraph (c), the duration of the works would not have exceeded the longer of the prescribed period or a reasonable period; and
- (c) not more than five items of signing, lighting or guarding remain on the highway.

(9) The requirements referred to in paragraph (7) are that—

- (a) the highway authority has—
 - (i) informed the undertaker of the identity and location of the items referred to in paragraph (8)(c); and
 - (ii) requested the undertaker to remove them; and
- (b) the undertaker has complied with the request by the end of the next day following the date on which the request was received.

(10) A highway authority may reduce the amount, or waive payment, of a charge—

- (a) in any particular case,
- (b) in such classes of case as they may decide,
- (c) in all cases,

^(a) Schedule 3A was inserted by the Traffic Management Act 2004 (c.18), section 52(2).

- (d) in all cases other than a particular case, or
- (e) in all cases other than such class of case as they may decide.

(11) Charges are only payable in respect of street works where the highway authority has given the undertaker, not later than three months after receipt of a works clear notice or a works closed notice, an account in writing setting out the charges payable.”

Transitional Provision

5.—(1) Regulation 9 of the Street Works (Charges for the Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009 (“the 2009 Regulations”) shall continue to have effect in its original form for street works for which an undertaker, before 1st October 2012—

- (a) first gave notice under section 54(1), 55(1) or 57(2) of the New Roads and Street Works Act 1991 or notification under paragraph 2(1)(d) of Schedule 3A to that Act; or
- (b) first applied for provisional advance authorisation or a permit in respect of the works.

(2) In this regulation—

“permit” has the meaning given in the 2009 Regulations; and

“provisional advance authorisation” has the meaning given in the Traffic Management Permit Scheme (England) Regulations 2007.

Signed by authority of the Secretary of State

2nd September 2012

Norman Baker
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations amend the Street Works (Charges for the Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009 (“the 2009 Regulations”).

Regulation 3 amends regulation 3 of the 2009 Regulations to insert “carriageway” before “footpath” as a term which has the meaning given in section 329(1) of the Highways Act 1980. In addition, the definitions of “minor works” and “standard works” in the 2009 regulations have been amended to remove reference to regulation 9(8) which is not replicated in the new regulation 9 contained in these Regulations.

Regulation 4 substitutes a new regulation 9 into the 2009 Regulations. The new Regulation 9 continues to prescribe a charge payable by undertakers for each day or part of a day that the duration of street works exceeds the longer of the prescribed period or a reasonable period (“period of overrun”). However, the level of charges in the new regulation 9 is now dependent on the status of the street where the works take place rather than the category of works (for example, whether the street is designated as a traffic-sensitive street). It will also be dependent on whether the works taking place during a period of overrun do so at any time on the carriageway. In addition, for works which take place during a period of overrun on certain types of street a higher rate of charge will be applicable after the first three days. In addition to the above, the new regulation 9 differs from the original regulation 9 in the following ways. Paragraph (2)(a) provides certain exclusions from the requirement in paragraph (1) to pay a charge. Paragraph (2)(a) is now extended to include protected streets within those exclusions. Paragraphs (4) and (5) prescribe the way in which the amount of charge is calculated. Paragraph (4) provides that if, during a period of overrun, the works take place on any part of the carriageway, the amount of the daily charge in relation to the description of street in column (2) of an item in column (1) is set out in column (3) in Table 1. After the first three days the charge will be that stated in column (4). As the category of works no longer determines the amount of the charge, paragraphs (5) to (8) of the original regulation 9 have been omitted from the new regulation 9.

Paragraph (5) prescribes lower rates of charge to those in paragraph (4) for works which do not take place on the carriageway at any time during a period of overrun. For such works the amount of the daily charge in relation to the description of street in column (2) of an item in column (1) is set out in column (3) of Table 2. Paragraph (6) defines certain terms for the purposes of regulation 9. Firstly, that “description of street” means the description of the street at the time when the undertaker first makes any of the notifications or applications set out in sub-paragraphs (a) and (b). It also defines the terms “period of overrun” and “provisional advance authorisation”. Paragraphs (7) to (9) provide for a single lower charge where the works have been completed on time and up to five items of signing lighting or guarding remain. This provision remains the same as in the original regulation 9, save that the maximum number of items has been increased from one to five. The wording of paragraphs (10) and (11) are unchanged from the original regulation 9.

Regulation 5 is a transitional provision which retains the original regulation 9 for calculating charges for certain works. Where the notifications set out in sub-paragraph (a) or the applications set out in (b) are made by an undertaker before the 1st October 2012, any charges which are required to be paid for a period of overrun on those works will be calculated in accordance with the original regulation 9.

An impact assessment on the effects this instrument will have on business and the voluntary sector is available from the Department for Transport, zone 3/26, 33 Horseferry Road, London SW1P 4DR and is published with the Explanatory Memorandum alongside this instrument on www.legislation.gov.uk.

STATUTORY INSTRUMENTS

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£4.00

E4413 09/2012 124413 19585

ISBN 978-0-11-152854-9



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