EXPLANATORY MEMORANDUM TO

THE STREET AND ROAD WORKS (CHARGES AND PENALTIES) (AMENDMENTS) (ENGLAND) REGULATIONS 2025

2025 No. 1074

1. Introduction

1.1 This Explanatory Memorandum has been prepared by the Department for Transport (DfT) and is laid before Parliament by Command of His Majesty.

2. Declaration

2.1 Simon Lightwood MP, Parliamentary Under Secretary of State, Roads and Buses Minister at the Department for Transport confirms that this Explanatory Memorandum meets the required standard.

2.2 Gavin James, Deputy Director for Traffic and Technology, at the DfT confirms that this Explanatory Memorandum meets the required standard.

3. Contact

3.1 Stephanie Masters at the DfT can be contacted by email at the following address with any queries regarding the instrument: stephanie.masters@dft.gov.uk. Alternatively, the department can be contacted by telephone: 0300 330 3000.

Part One: Explanation, and context, of the Instrument

4. Overview of the Instrument

What does the legislation do?

4.1 Street works are works connected with placing, adjusting or removing apparatus in a highway, except for works carried out by the highway authority itself. A highway authority is defined as any authority responsible for a highway maintainable at public expense. This statutory instrument implements an increase to fixed penalty notices for street works offences, applies overrun charges to weekends and bank holidays where works extend beyond the agreed duration, and requires highway authorities to spend 50% of surplus funds from lane rental schemes on road maintenance. This statutory instrument will improve compliance with existing regulations, ensure street works are carried out on time and with minimal disruption to road users, and increase the level of funds available for road maintenance.

Where does the legislation extend to, and apply?

4.2 The extent of this instrument (that is, the jurisdiction(s) which the instrument forms part of the law of) is England and Wales.

4.3 The territorial application of this instrument (that is, where the instrument produces a practical effect) is England.

5. Policy Context

What is being done and why?

5.1 **Lane rental surplus funds-** A lane rental scheme allows a highway authority to charge up to £2,500 per day for works on the busiest roads at the busiest times.

Charges apply to works carried out by or on behalf of both utility companies and highway authorities. Schemes incentivise carrying out works at less busy times, carrying out joint works with other organisations and moving the works. If the charge cannot be avoided, then lane rental schemes provide an incentive to complete the works as quickly as possible as they are charged daily to work on the road.

5.2 The Street Works (Charges for Occupation of the Highway) (England) Regulations 2012 (2012 lane rental regulations) provide that an authority may deduct from charges reasonable costs of operating and evaluating the effectiveness of their scheme. Any surplus funds should be used with the purpose of reducing disruption and other adverse effects caused by street works.

5.3 Existing schemes build up lane rental surplus funds and can find it difficult to find projects to allocate them to whilst more funding is needed for road maintenance. This instrument will ensure lane rental surplus funds remain available to support innovation and reduce disruption caused by street works whilst also providing authorities with a lane rental scheme, funding to use on road maintenance, improving the roads.

5.4 **Fixed penalty notices (FPNs)-** A FPN gives a utility company the opportunity to avoid criminal prosecution for an offence by paying a penalty. This allows for the resolution of minor infringements without resorting to taking the matter to a magistrates' court, which can take both time and involve administration costs.

5.5 The amount of FPN has not changed since 2007. Working without a permit and breaching permit conditions are serious offences that can mean disruption for road users, increased congestion, and risks to safety. Prompt notification of works' start and stop notices is important to ensure that up to date information is available to road users to reduce congestion and the impact of works on, for example, buses. Prompt notification of reinstatements means that inspections can then be carried out to ensure compliance with safety and technical standards, and any defects can be repaired promptly to ensure they do not increase the number of potholes.

5.6 FPNs have been issued via the DfT's Street Manager service since 2020, which is a digital service used by every highway authority and utility company in England to raise permits, record reinstatements and inspections, and issue penalties.

5.7 This statutory instrument raises the FPN charge to increase the level of deterrent they provide and to improve compliance.

5.8 The FPNs for late notification of reinstatements and works start and stop notices and breach of permit conditions is now £240, discounted to £160 if paid within 29 days. For working without a permit the FPN is now £1000, discounted to £600 if paid within 29 days.

5.9 **Overrun charges-** Authorities can charge where works overrun the durations agreed by the permit on weekdays. The charge that can be applied varies according to the type of road and the number of days overrun, and can be up to £10,000 per day. Overrun charges currently apply to weekdays only. Roads are often just as busy on weekends as they are on weekdays therefore this statutory instrument applies overrun charges at weekends and on bank holidays, as well as weekdays.

What was the previous policy, how is this different?

5.10 **Lane rental surplus funds**- Previously, surplus funds could only be used with the purpose of reducing disruption and other adverse effects caused by street works. 50% of these funds must now be used for road maintenance.

5.11 **Fixed penalty notices (FPNs)-** The previous amount for FPNs for late notification of reinstatements and works start and stop notices and breach of permit conditions was £120, discounted to £80 if paid within 29 days. For working without a permit the FPN was £500, discounted to £300 if paid within 29 days. This statutory instrument doubles these amounts.

5.12 **Overrun charges-** Highway authorities can charge utility companies for occupation of the highway where works are unreasonably prolonged. These are known as overrun charges. Charges are invoiced and payable to the relevant highway authority.

5.13 Highway authorities can charge up to £10,000 per day. The level was set to reflect the costs of congestion as a result of overrunning works. The charge payable can be negotiated and is paid via an invoice to the highway authority. A highway authority may deduct from any charges received, the reasonable costs of operating the scheme. They can also use net charges to develop or implement policies to promote and encourage safe, integrated, efficient and economic transport facilities and services to, from and within their area.

5.14 The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009 (2009 regulations) stated that overrun charges could only apply on a working day – that is a weekday. This statutory instrument now allows highway authorities to apply charges to weekends and bank holidays.

6. Legislative and Legal Context

How has the law changed?

6.1 This statutory instrument is made using powers in the New Roads and Street Works Act 1991 (NRSWA) and the Traffic Management Act 2004 (TMA).

6.2 **Lane rental surplus funds**- The Street Works (Charges for Occupation of the Highway) (England) Regulations 2012 (2012 lane rental regulations) is amended to require highway authorities to invest 50% of surplus lane rental funds into highway maintenance.

6.3 **Fixed penalty notices-** The amount of penalty charges payable for FPN offences are set out in the Street Works (Fixed Penalty) (England) Regulations 2007 (2007 FPN regulations) and Traffic Management Permit Scheme (England) Regulations 2007 as amended (2007 permit regulations). These are amended to raise the level of FPN charges payable for criminal offences relating to street works.

6.4 **Overrun charges-** Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009 (2009 charges regulations) is amended to allow overrun charges to be applied at weekends and bank holidays.

Why was this approach taken to change the law?

6.5 Amending the 2007, 2009 and 2012 regulations is the only lawful means by which the increased fixed penalties, extended overrun charges, and lane rental surplus spending requirement can be implemented, as the relevant charges and spending rules are set out in those regulations.

7. Consultation

Summary of consultation outcome and methodology

7.1 Between 15th January and 11th March 2024, the previous government carried out a consultation[1] which set out proposals to require local authorities with lane rental schemes to use at least 50% of any surplus funds on pothole repairs or resurfacing, increase the level of Fixed Penalty Notices (FPNs) available for some street works offences, and extend charges for overrunning street works at weekends and bank holidays. The consultation was available online to members of the public and stakeholders were made aware of the consultation.

7.2 479 responses to the consultation were received. The majority of responses were from highway authorities, members of the public and utility companies. There were responses from MPs, representative organisations and other associations and bodies.

7.3 341 responses (71%) supported the proposal to allow a minimum 50% of surplus lane rental funds to be spent by highway authorities on repairing potholes. The majority of those in favour were members of the public.

7.4 For fixed penalty notices, the consultation asked whether they should stay the same, be doubled or be raised in line with inflation. The majority of those that responded supported the proposal to increase FPNs with 249 responses supporting the option to double them. The main supporters were highway authorities and members of the public.

7.5 351 (73%) of those that responded supported the proposal to allow overrun charges to be applied at weekends. Almost all highway authorities supported this proposal as did the majority of the members of the public that responded.

7.6 The majority of utility companies opposed all of the proposals due to concerns around additional costs and asked for more clarity on how each of the proposals would be implemented.

7.7 Highway authorities, and others that supported the proposals, felt that the changes would reduce disruption caused by street works and improve compliance with regulations when carrying out works.

7.8 The response to the consultation[2] was published by Government in December 2024. It set out the Government's decisions, taken as a result of the consultation, to require highway authorities to spend a minimum of 50% of surplus lane rental funds on highway maintenance, to double FPN charges for fines relating to offences under the New Roads and Street Works Act, to allow overrun charges, applied under section 74 of the New Roads and Street Works Act 1991, to be applied at weekends and bank holidays and, to allow highway authorities to issue FPNs for late submission of works start and stop notices at weekends and bank holidays.

8. Applicable Guidance

8.1 Guidance will be updated to set out the changes to FPNs, overrun charges and how lane rental surplus funds can be used. We will update the Code of practice for the co-

[1] https://www.gov.uk/government/consultations/street-works-fines-and-lane-rental-surplus-funds/street-works-fines-and-lane-rental-surplus-funds

[2] https://www.gov.uk/government/consultations/street-works-fines-and-lane-rental-surplus-funds/outcome/street-works-fines-and-lane-rental-surplus-funds-outcome

ordination of street and road works[3] and the Permit schemes: statutory guidance for highway authorities[4]. The updates will be available by the time of implementation in January 2026.

8.2 The changes brought forward by this instrument will apply to conduct that occurs on or after 5 January 2026 (regardless of when the works began). This approach addresses current disruption, maintains parity across all undertakers under the new regime, and avoids administrative complexity for highway authorities in distinguishing start dates of works.

Part Two: Impact and the Better Regulation Framework

9. Impact Assessment

9.1 A full Impact Assessment has not been prepared for this instrument because the estimated costs and benefits are lower than the threshold needed for an impact assessment to be undertaken. A de minimis assessment has been prepared.

Impact on businesses, charities and voluntary bodies

9.2 The impact on business, charities or voluntary bodies is considered to be low. FPNs and overrun charges are avoidable and are only issued to businesses that do not comply with legislation. Utility companies that do not comply may face additional costs, however the changes should incentivise improvements in efficiency to avoid charges. Lane rental charges are also avoidable and these changes do not change the level of charges, only how funds generated can be spent.

9.3 The instrument does impact small or micro businesses. Whilst large utility companies represent most of the market share, there are some small and micro businesses also operating in various utility sectors who may have to spend proportionately more on staff or improving productivity to avoid charges. The risk of paying charges or penalties will need to be considered in their decision-making process, meaning they may need to spend more on factor costs (in the form of employing more workers or improving their productivity) or would have to pay the charges/penalties. This could increase the operating costs of any business in this sector; however the impact could be especially large for smaller companies.

9.4 Any exemptions to the rules would reduce improvements to congestion and funding available for road maintenance.

9.5 The changes to lane rental surplus funds will make more funding available to highways authorities for road maintenance. Improved road condition, alongside the changes to incentivise better compliance from utility companies when carrying out works will reduce disruption and congestion on the roads.

10. Monitoring and review

What is the approach to monitoring and reviewing this legislation?

10.1 The approach to monitoring this legislation is to carry out a post implementation review five years after it comes into force.

[3] https://assets.publishing.service.gov.uk/media/64357897cc9980000cb89367/co-ordination-code-of-practice-2023.pdf

[4] https://assets.publishing.service.gov.uk/media/643675aa877741001368d834/permit-schemes-statutory-guidance-july-2022.pdf

10.2 The instrument does not include a statutory review clause and, in line with the requirements of the Small Business, Enterprise and Employment Act 2015 Simon Lightwood, Minister for Roads and Buses has made the following statement; “I am satisfied that, notwithstanding the absence of a statutory review provision in this instrument, arrangements are in place to monitor and review the effectiveness and impact of these regulations, including their effect on businesses, and that a formal post-implementation review will be undertaken within five years of commencement.”

Part Three: Statements and Matters of Particular Interest to Parliament

11. Matters of special interest to Parliament

11.1 Paragraph 5.10 has been amended to reflect that authorities must use 50% of lane rental surplus funds for highway maintenance. Paragraph 8.2 has been amended to clarify that regulations do not have retrospective effect and only apply to conduct that occurs after the date the regulations come into force. A ministerial statement has been added at paragraph 10.2 to explain why there is no statutory review included in the regulations.

12. European Convention on Human Rights

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

13. The Relevant European Union Acts

13.1 This instrument is not made under the European Union (Withdrawal) Act 2018, the European Union (Future Relationship) Act 2020 or the Retained EU Law (Revocation and Reform) Act 2023 ("relevant European Union Acts").