EXPLANATORY MEMORANDUM TO

THE STREET WORKS (CHARGES FOR UNREASONABLY PROLONGED OCCUPATION OF THE HIGHWAY) (ENGLAND) (AMENDMENT) REGULATIONS 2009

2009 No. 1178

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

This memorandum contains information for the Joint Committee on Statutory Instruments.

2. Purpose of the instrument

These Regulations amend regulation 15(5) of The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009 ("the 2009 Regulations").

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

3.1 After the 2009 Regulations were laid, the Joint Committee on Statutory Instruments requested a memorandum concerning regulation 15(5). That regulation provides that, from and including the 1st April 2009, any notices required to be given under the 2009 Regulations between certain parties must be served by electronic means. That date was before the Regulations came into force on the 6th April 2009.

3.2 Although there was no requirement to serve notices by the means specified in regulation 15(5) before the 2009 Regulations came into force and therefore no retrospective effect, the Department, in a memorandum to the Committee dated 16th March 2009, agreed to amend that regulation by removing reference to the earlier date.

4. Legislative Context

4.1 Part III of the New Roads and Street Works Act 1991 ("the 1991 Act") makes provision for street works carried out in England and Wales. Since devolution, these powers have been exercised, with respect to Wales, by the Welsh Assembly Government.

4.2 In Part III, "street works" means works executed by an undertaker to lay, maintain, repair etc apparatus in a street under either a statutory right or a street works licence, as well as works required for or incidental to such works.

Undertakers are mainly utility companies, but can be persons granted a street works licence to carry out street works.

4.3 The 2009 Regulations, in addition to permitting street authorities to require undertakers to pay a charge where street works overrun, also require undertakers to give certain notices relating to street works and prescribe the manner in which such notices should be given.

5. Territorial Extent and Application

This instrument applies to England.

6. European Convention on Human Rights

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

7. Policy background

What is being done and why

These Regulations amend regulation 15(5) of the 2009 Regulations by removing reference to the 1st April 2009 to make clear that the requirements of that regulation only applied when those Regulations came into force.

8 Consultation outcome

The 2009 Regulations were subject to three rounds of consultation. No further consultation has taken place as these Regulations consist of a single amendment to the 2009 Regulations.

9. Guidance

Guidance is in place in relation to the 2009 Regulations in the form of the Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters. No further guidance is being issued relating to this amendment. Undertakers and street authorities are utilising systems already in place for the service of other types of street works notices and therefore there are no further impacts upon the way that such parties carry out their noticing requirements.

10. Impact

10.1 There is no impact on business, charities or voluntary bodies in relation to these Regulations.

10.2 There is no impact on the public sector by these Regulations.

11. Regulating small business

The 2009 Regulations predominantly concern local authorities and undertakers. These Regulations do not have any additional impact on those organisations.

12. Monitoring & review

The Department intends to review the effectiveness of the 2009 Regulations in 2010.

13. 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.