EXPLANATORY MEMORANDUM TO

THE STREET WORKS (CHARGES FOR UNREASONABLY PROLONGED OCCUPATION OF THE HIGHWAY) (ENGLAND) (AMENDMENT) REGULATIONS 2012

2012 No. 2272

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

2. Purpose of the instrument

2.1 To increase the level of charges that may be imposed by English highway authorities by way of penalty where street works carried out by utility companies and others take longer than reasonably necessary. The intention is that the charges should better reflect the costs of disruption and inconvenience that result from overrunning works, providing a stronger incentive for those carrying out street works to complete their works within a reasonable period and so reducing the resulting disruption. This results in charge increases which, in many cases, are substantially higher than the rate of inflation.

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

3.1 None.

4. Legislative Context

4.1 The instrument fulfils a commitment in the Department for Transport's business plan to increase the rates of charge, so that they better reflect the disruption costs that result from overrunning street works.

4.2 The Government's decision to increase these charges was announced to Parliament by Written Ministerial Statement on 13 March 2012 (Commons *Hansard* Col. 16WS; Lords *Hansard* Col. WS13).

5. Territorial Extent and Application

5.1 This instrument applies to England only.

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

7.1 Works carried out in the street by utility companies and others with apparatus in the street are necessary in order to maintain and enhance the utility services which households and businesses depend on, but they can also cause substantial disruption to traffic and other road users. Congestion related to street works is estimated to cost the economy and society over £4 billion a year.

7.2 Part 3 of the New Roads and Street Works Act 1991 places local authorities under a duty to coordinate works taking place in their areas, and provides various tools aimed at reducing the disruption caused by these works. This includes provision for highway authorities to impose "overrun charges" on street works undertakers where their works overrun their agreed duration, providing an incentive for them to complete their works on time.

7.3 Evidence from an evaluation of overrun charges following their introduction around a decade ago, plus more recent anecdotal evidence from utility companies and local authorities, suggests that overruns have become less common since the introduction of overrun charges, but there remains scope to do more to reduce their frequency. In many cases, particularly on streets on which there are heavy traffic flows and/or have been designated as "traffic-sensitive" by the highway authority, existing levels of charge are not sufficiently high to reflect the costs of disruption and inconvenience that overruns typically cause. Streets may be designated as "traffic-sensitive" by the highway authority if they meet one or more of a set of criteria set out in separate Regulations (SI 2007/1951). The criteria relate to matters including flow rates of general traffic, heavy commercial vehicles and buses; proximity to a critical signalised junction, gyratory or roundabout system; or the existence of a congestion charging scheme. This instrument aims to strengthen the financial incentive for street works undertakers to invest in additional measures to further reduce the prevalence of overruns. It also changes the basis of charging, such that charges will no longer depend upon the category of works being carried out. Works are categorised as "major", "standard" or "minor" depending on their planned duration, or as "immediate" if they are necessary to deal with an emergency or other urgent matter (e.g. to restore utility supplies). This is because there is not judged to be a strong correlation between category of works and disruption caused.

- Consolidation

7.4 This instrument amends regulations that were made in 2009. Apart from this instrument, there has been only one other minor amendment to those 2009 regulations. The Department therefore has no current plan to consolidate these instruments.

8. Consultation outcome

8.1 The Department for Transport published a consultation paper in March 2010, prior to the last General Election. The consultation ran for twelve weeks. The previous Government's preferred option at that time was to raise charges on the busiest traffic-sensitive streets very significantly. Increases were also proposed for some other categories of street.

8.2 A summary of the consultation responses can be found at www.dft.gov.uk. Most responses came from local authorities, utility companies and their representative bodies. Responses were evenly split between those favouring the proposals (mostly local authorities and other respondents) and those opposing them (mostly utility companies). Opponents argued that the proposed charges were disproportionately high and risked creating perverse incentives that would increase rather than reduce disruption. For example, a utility company seeing that an overrun was likely would have a strong incentive to clear the site and reopen the road on time, knowing that they would need to return another time for further works to complete the job. Most consultees felt that charges should no longer depend on the category of works being carried out as they considered that there was not a close correlation between the level of congestion and the category of work.

8.3 In light of the 2010 consultation responses, the current Government developed a revised proposal, which involved a more moderate increase in the rates of charge applying to the busiest streets. This included a daily charge of £5,000 a day for the first three days of overrun, rising to £10,000 thereafter. Changes to the charge rates for other streets were also proposed, including that charge rates should no longer vary by reference to the planned duration of the works. These changes were included in the further proposal sent to Highway Authorities and Utilities Committee (UK) (HAUC(UK)) and other stakeholders in January 2011, in addition to the proposal to abandon the link between levels of charge and works category. This was consistent with the majority view from the consultation responses. The intention with the revised proposed charges was to apply rates that correlated more closely to the cost of the congestion caused as calculated following research into traffic levels and estimated resulting delay times. In addition, it was decided that for overrunning works that are wholly on the footway (which are less disruptive in nature) the maximum charge would be less than for works which take place on the carriageway.

8.4 Utilities supported the proposal to apply a more moderate increase in charges on the busiest traffic-sensitive streets, but remained concerned that charges would increase significantly for some road categories, particularly for minor and standard works on less busy streets. They also supported as more relevant the removal of the link between charges and works categories, and implementing one with street categories. Nevertheless, the overall cost to utilities of the revised (January 2011) proposal is estimated to be about a third lower than the original (March 2010) proposal.

8.5 Accordingly, the Government decided to proceed with the revised proposal, as announced on 13 March 2012 and implemented by this instrument. A table summarising the existing and new daily charges is annexed to this Memorandum.

9. Guidance

9.1 The Government is publishing supporting guidance in a revised chapter of the Code of Practice for the Coordination of Street Works and Works for Road Purposes, which will be available at www.dft.gov.uk. Utility companies and local authorities have been closely involved in the preparation of this revised guidance, through HAUC (UK).

10. Impact

10.1 An Impact Assessment has been prepared and will be published alongside this Explanatory Memorandum on the legislation.gov.uk website. The main costs of the proposal will fall on utility companies; the main benefits accrue to local authorities (in the form of additional revenues generated, which must be spent on transport-related purposes) and to road users (in the form of reduced disruption).

11. Regulating small business

11.1 The legislation applies to small business. The disruption caused by street works does not vary with the size of the organisation carrying out the works. The moratorium on new regulation for micro-businesses and start-ups does not apply to these regulations.

12. Monitoring & review

12.1 The Department will invite views from the Highway Authorities and Utilities Committee on the effectiveness of the new charges after a year of operation. If no changes arise from that initial review, a further review is planned for summer 2018.

13. Contact

Barbara King at the Department for Transport (Tel: 020 7944 2976 or email: Barbara.King@dft.gsi.gov.uk) can answer any queries regarding the instrument.

ANNEX – Summary of existing and new charges

Road category	Traffic sensitive?	Works category	Daily charges (£)		
			Existing	Final	
				Carriageway	Non-c'way
0 or 1	TS	Major / standard	2,500	5,000 (first 3 days) 10,000 (thereafter)	2,500
		Minor / immediate	500		
	Non-TS	Major / standard	2,500	2,500	
		Minor / immediate	500		
2	TS	Major / standard	2,000	3,000 (first 3 days) 8,000 (thereafter)	2,000
		Minor / immediate	500		
	Non-TS	Major / standard	2,000	2,000	
		Minor / immediate	500		
3 or 4	TS	Major / standard	750	750	250
		Minor / immediate	250		
	Non-TS	Major / standard	250	250	
		Minor / immediate	100		

Under the new Regulations, the traffic-sensitive rate will apply only if the overrun affects the carriageway of a traffic-sensitive street. If it affects only the footway or verge of such a street, the non-traffic-sensitive rate will apply.

Under the new Regulations, in relation to traffic-sensitive streets, different charge rates apply depending on whether the works encroach onto the carriageway ("carriageway" column) or are confined solely to other parts of the highway ("non-c'way" column).