EXPLANATORY MEMORANDUM TO

THE STREET WORKS (INSPECTION FEES) (ENGLAND) (AMENDMENT) REGULATIONS 2007

2007 No. 584

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. These Regulations increase the fee charged by street authorities, from £21 to £24, for the inspection of works carried out by undertakers (e.g. gas, water, electricity and telecommunication companies) in or under a street.

2.2. This increase has been requested by the Highway Authorities Utilities Committee ("HAUC (UK)") to enable a street authority to continue to recover the costs of carrying out such inspections.

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

3.1. The current fee of £21 was set three years ago by the Street Works (Inspection Fees) (England) (Amendment) Regulations 2004 (No. 572). The increase to £24 represents an approximate annual increase of 4.75% for each year since then.

3.2. The new fee has been calculated using the same formula used in 2004. The formula uses nationally agreed figures for the average inspectors' salary, National Insurance, superannuation contributions and travel costs. The fee will not be a source of additional revenue for authorities.

3.3. HAUC(UK) have recommended that the fee be reviewed annually to ensure that it reflects the actual cost of carrying out an inspection.

4. Legislative background

4.1. Part III of the New Roads and Street Works Act 1991 ("NRSWA") makes provision in relation to street works carried out in England and Wales. 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.

4.2. Section 75 of NRSWA sets out the rules covering the inspection by street authorities of individual street works which undertakers carry out in the street (for instance to install new apparatus or to maintain existing apparatus) so as to ensure that they meet the relevant national standards. Section 75(1) provides that an undertaker, subject to any provisions of any scheme under this section, pays a prescribed fee to the street authority for each inspection of the works carried out by the authority.

Regulations under Section 75(3) may establish a scheme under which undertakers pay the prescribed fee only in respect of such proportion or number of excavations or other works as is determined under the scheme.

4.3. The Street Works (Inspection Fees) (England) Regulations 2002 established a scheme in relation to England which provided that undertakers would pay a fee of £20.00 for each random inspection, up to a set maximum percentage (currently approximately 30%), of works carried out by each undertaker in a given year. This fee was last increased in 2004 to £21 to reflect the increase in costs to a street authority in carrying out an inspection.

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

7.1. 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.

7.2. In summer 2006 HAUC (UK) reconvened the Fees Steering Group (representatives from utilities, highway authorities, and DfT), to consider the fee charged for carrying out an inspection. Consultation was therefore carried out through this forum. HAUC (UK) endorsed the steering group findings and wrote in December 2006 asking that the existing regulations be amended to set a new fee of £24 with effect from 1 April 2007.

7.3. The new fee was calculated using the formula agreed with HAUC (UK) in 2003 which was also used to calculate the fee set in 2004. The formula uses nationally agreed figures for the average inspectors' salary, National Insurance, superannuation contributions, and travel costs.

7.4. The inspection fee only covers the cost incurred by street authorities in carrying out the set percentage sample of random inspections of undertakers' works. It is not an additional source of revenue for an authority. The change of fee is neither politically nor legally important.

8. Impact

8.1. A Regulatory Impact Assessment is attached to this memorandum.

8.2. The increased fee will enable street authorities to continue to recover the costs which they incur in carrying out the required sample of random inspections.

9. Contact

Ann Colley at the Department for Transport, Traffic Management Division. Tel: 020 7944 2978 or e-mail: ann.colley@dft.gsi.gov.uk can answer any queries regarding the instrument.

Regulatory Impact Assessment

Title of Proposal

1. The Street Works (Inspection Fees) (England) (Amendment) Regulations 2007

Purpose and intended effect

Objectives

2. To enable street authorities to recover their costs when carrying out the random sample inspections of works (approximately 30%) carried out by undertakers (e.g. gas, water, electricity and telecommunication companies) on or under the street, in accordance with s75 of the New Roads and Street Works Act 1991 ("NRSWA"), from £21 to £24.

3. The fee will not produce surplus revenue for a street authority, taking one year with another.

Background

4. NRSWA provides a legislative framework for street works activities, and is supported by regulations and codes of practice. Section 75 of NRSWA sets out the rules covering the inspecting by street authorities of individual street works which undertakers carry out in the street (for instance to install new apparatus or to maintain apparatus that is already in place) to ensure that they meet the relevant national standards. Section 75(1) provides that an undertaker, subject to any provisions of any scheme under this section, pays a prescribed fee to the street authority for each inspection of the works carried out by the authority. Regulations under Section 75(3) may establish a scheme under which undertakers pay the prescribed fee only in respect of such proportion or number of excavations or other works as is determined under the scheme.

5. Regulations activating the powers in section 75 and setting the fee level were first made in 1992 and have been amended several times since. The fee for each inspection was set by the *Street Works (Inspection Fees) (England) Regulations 2002*, which established a scheme in relation to England and provided that undertakers would pay a fee to street authorities of £20.00 for each random sample inspection, up to a set maximum percentage (approximately 30%), of works carried out by each undertaker in a given year. Any additional inspections would be carried out at authorities' own expense. The most recent regulations - the *Street Works (Inspection Fees) (England) (Amendment) Regulations 2004* set the fee at £21.00.

6. The Highway Authorities and Utilities Committee ("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 Utilities Group ("NJUG"). HAUC(UK) agreed that a review of the actual costs of carrying out an inspection should be undertaken and the Inspections Fees steering group was reconvened to do this. Representatives from the Department for Transport, NTL, Openreach, Thames Water, the Highways Agency, Leeds City Council, City and Council of Swansea, Nottingham County Council and Barnsley Metropolitan Borough Council attended the group. The review has now been completed and HAUC(UK) have recommended that the fee be increased to £24 with effect from 1 April 2007.

Rationale for Government Intervention.

7. Since the regulations were last amended in 2004, the cost of carrying out an inspection has increased. The fee is not a source of revenue for the authorities but allows them to recover their costs in carrying out the inspections. In order for the fee to be increased, regulations need to be amended.

Consultation

8. Consultation with utilities and street authorities has taken place within HAUC(UK). Although utilities subcontract work to other firms, some of which may be small businesses, most utilities are large organisations and it will be they who are responsible for paying the inspection fees.

9. HAUC(UK) agreed that following the last increase to the fee in 2004 a review should be carried out to determine what level the inspection fee should be set at in the future. To do this the Inspection Fee Steering Group was asked to examine the costs involved in carrying out an inspection (for example, travel and overheads) in 2006.

10. The steering group presented their findings to HAUC(UK) in October 2006 who endorsed their findings and have asked that the existing regulations be amended to set the new fee of £24 as of 1 April 2007.

Options

Do Nothing

11. If inspection fees were to remain unchanged, street authorities would incur a loss.

Increase inspection fee

12. To increase the sample inspection fee to £24. This will enable street authorities to recover their costs in carrying out the sample inspections.

Costs and benefits

Sectors and groups affected

- Local Authorities (in their capacity as street authorities)
- Utility Companies (gas, electric, telecommunications, water)

Race Equality Impact

13. There are no race equality impacts to these proposals.

Environmental Impact.

14. There are no environmental impacts to these proposals.

Disability Impact Assessment

15. There are no disability impacts to these proposals.

Benefits

16. Authorities will continue to carry out inspections to ensure that utility work meets national standards e.g. safety to pedestrians and road users by proper signing, lighting and guarding of street works; and works are carried out in accordance with excavation and reinstatement standards. As a result there should be:

- a reduction in the risk of accidents, both pedestrian and traffic;
- less disruption to road users, resulting in less congestion and hence minimising delay caused by street works;
- less pollution caused through less congestion; and
- less inconvenience to pedestrians.

17. Those benefiting will include street authorities, businesses, private motorists, public transport operators, passengers, pedestrians, other road users and those with disabilities.

Costs

18. Undertakers already have to meet the cost of the random sample of inspections under the current regulatory regime.

19. The Department's consultants Halcrow estimate that there are currently 1.2 million road works carried out, in England, by undertakers every year. 30% of this represents approximately 360,000 inspections a year. Given this, we could expect an increase of £3 to the inspection fee to cost an additional amount of approximately £1,080,000 across all undertakers.

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
30% Inspections	70,275	66,900	73,140	149,685	360,000
Cost of additional £3 per inspection	£210,825	£200,700	219,420	£449,055	£1,080,000

20. The increased fee has been calculated using a formula agreed with HAUC(UK) in 2003. It was agreed by the Inspection Fees Steering Group to use this formula to calculate the fee for 2007/8. Annex A gives a full breakdown of how the £24 was derived. If the increase is not approved then street authorities will incur additional costs.

21. The current fee of £21 was set three years ago by the *Street Works (Inspection Fees) (England) (Amendment) Regulations 2004 (No. 572).* This £3 increase represents an approximate annual increase of 4.75% each year for the three year period 2004 - 2007, raising the fee to £24. This increase has been calculated using nationally agreed figures for average inspectors' salary, National Insurance, superannuation contributions and travel costs.

Small Firms Impact Test

22. It is thought that the impact on small business should be limited. Although utilities subcontract work to other firms, some of which may be small businesses, most utilities are large organisations and it will be they who are responsible for paying the fees.

Competition assessment

23. A competition filter test on the likely effect of the Regulations was completed.

24. The Regulations would affect four sectors within the private sector relating to management of the infrastructure of services: (i) water utilities, (ii) electricity utilities, (iii) gas utilities and (iv) telecommunications utilities.

25. Water and electricity companies (such as Thames Water and EDF Energy respectively) operate on a regional basis, rather than in direct competition with each other. In the water sector, companies operate local and regional monopolies. In the electricity sector, the distribution businesses operate on a regional basis, rather than in direct competition with each other. The gas sector has regional distribution networks that operate as regional monopolies, similar to the electricity companies. Given that, we do not believe that the regulations would have a significant effect on competition in any of the three sectors. The telecommunications sector has been deregulated 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. OFCOM has found that BT has significant market power in these areas, with around 80% of the UK market.

26. We do not believe that there would be implications for competition in increasing the inspection fee as all undertakers will be subject to approximately 30% random inspection of works.

Enforcement, sanctions and monitoring

26. HAUC(UK) will continue to keep under review whether the fee reflects the cost of carrying out an inspection and the Steering Group has recommended that the fee be reviewed annually. If necessary the fee could be adjusted after such reviews through amended regulations.

Implementation and delivery plan.

27. That the new fee comes into effect from 1 April 2007.

Post Implementation review.

28. The fees steering group reconvene in summer 2007 to review the fee.

Summary and recommendation

29. Increasing the inspection fee will enable street authorities to recover their costs in carrying out the random sample inspections, approximately 30%, of works carried out by undertakers. This represents an additional sum of approximately £1.08 million payable by utilities proportionate to the number of works they carry out.

30. It is recommended that the amending regulations be laid before parliament.

Summary costs and benefits table

Option	Total benefit per annum: economic, environmental, social	Total cost per annum: - economic, environmental, social - policy and administrative

Do nothing	No change	Result in costs for street authorities as they would not recover the cost of carrying out the sample inspections.
Increase Fee	No Change	Approximately £1.08M payable by utilities

Declaration and publication

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

Signed G. Merron.

Date 28th February 2007

Gillian Merron MP
Parliamentary Under Secretary of State,
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Contact point for enquiries and comments:
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Inspection Fee Formula

Annex A

$$\frac{\left(\frac{\text{Inspectors Payroll Costs (incl NI/Superannuation)}}{\text{Annual Productive Hours}} \times \text{On Cost Multiplier}\right) + \text{Hourly Travelling Costs}}{\text{Inspection Time (Hours)}}$$

Formula Calculation	Projected 2007/08 figure (with 2.00% pay award, excluding any changes to the NIC/ Superannuation
National Joint Council (NJC) Pay Scales 05 & 06	National Agreed pay scales
National Insurance Tables	HM Revenue & Customs - National Insurance Contribution tables (NIC) (not attached)
Pension Average	Average contribution rate of 8 random authorities - 2 from each grouping. Figures supplied by Finance staff in the individual authorities.
Pension estimate circular	Background to support the current level of pension contributions

Data used for calculation:	2007/08		Comments
Inspectors salary	01 Apr 07	£ 23,639.00	**Average salary** NJC Pay scales (Bottom of SO1 point 29) Estimated Pay Awards April 2007 & 2008 2%
Other payroll costs - **National Insurance** **Superannuation**	 7.2% 17.9%	 1,698.00 4,223.00	2005/06 & 2006/07 HM Revenue & Customs - NIC Table CA 39 page 28 From Pension Ave Table
Total Payroll Costs		29,560.00	
Average Effective Hours		1,507.00	From Local Authority Effective Time Table below
Hourly Rate		19.61	
Multiplier	2.13	41.77	
Travelling **Average miles per hour** **Casual 1000 - 1199 rate per mile**	 8.11 0.40	 3.24	 Inland Revenue Tax level
Total Hourly Cost		45.01	
Gross Domestic Product inflator		Actual	
Total Hourly Cost		45.01	
Inspection Time	32 mins		
Cost per inspection (excl specialist testing)		**24.00**	

Local Authority Effective Time		
	Days	**Hours**
Working Day - National		7.40
Total (excl weekends)	261.0	1,931.4
Leave	-28.0	-207.2
Bank Hols	-8.0	-59.2
LA Special	-4.0	-29.6
Sick	-10.3	-76.2
Training	-7.0	-51.8
Net Total	203.7	1,507.4