EXPLANATORY MEMORANDUM TO

THE STREET WORKS (INSPECTION FEES) (ENGLAND) (AMENDMENT) REGULATIONS 2008

2008 No. 589

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 £24 to £25, 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 £24 was set in April 2007 by the Street Works (Inspection Fees) (England) (Amendment) Regulations 2007 No. 584. The increase to £25 represents an approximate increase of 4.2%

3.2. The new fee has been calculated using the same formula used in 2004 and 2007 (the two other increases of this fee). 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.

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 (for example, placing, repairing, altering or renewing apparatus) 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 legislative framework 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, e.g. safety to pedestrians and road users by proper signing, lighting and guarding of street works; works are carried out in accordance with excavation and reinstatement specifications. As a result there should be:

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

4.3. 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.

4.4. The Street Works (Inspection Fees) (England) Regulations 2002 established a scheme in relation to England which provided that undertakers pay a fee to a street authority for each random inspection. A fee can only be charged up to a set maximum percentage of works carried out by each undertaker in a given year (currently not more than 30%).

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 2007 the HAUC(UK) Fees Steering Group (representatives from utilities, highway authorities, and DfT), considered 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 October 2007 asking that the existing regulations be amended to set a new fee of £25 with effect from 1 April 2008.

7.3. Since the regulations were last amended in April 2007 (which increased the fee from £21 to £24) the cost of carrying out an inspection has increased, therefore the fee increased to meet these additional costs. If this was not done local authorities would then have to cover these costs themselves, going against the policy objective of random sample inspections being revenue neutral for authorities. The fee is not a source of revenue for the authorities but allows them to recover their costs in carrying out the inspections.

7.4. The new fee was calculated using the formula as detailed in paragraph 3.2 of this memorandum.

7.5. 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. An Impact Assessment has not been produced for this statutory instrument as the fee has been increased using a formula which has been agreed by HAUC(UK). Therefore statutory undertakers should have taken this into account when conducting their business planning.

8.2. The fee increase does not count as an impact as defined by the relevant guidance and no impact assessment is needed as it has been recommended to government by the industry involved. However, data on the cost of this fee increase has been provided for information.

8.3. Undertakers already have to meet the cost of the random sample of inspections under the current regulatory regime; the only additional cost is the increase in the fee. The Department has gathered data from local authorities in winter 2008 which indicated that there were approximately 1.4 million units of inspections of work carried out, in England, by undertakers every year. Based on this data 30% of this represents approximately 430,800 inspections a year. Given this, we could expect an increase of the inspection fee by £1 to cost an additional amount of approximately £430,800 across all undertakers.

9. Contact

Elizabeth Godden at the Department for Transport, Traffic Management Division. Tel: 020 7944 3624 or e-mail: elizabeth.godden@dft.gsi.gov.uk can answer any queries regarding the instrument.

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