EXPLANATORY MEMORANDUM TO

THE STREET WORKS (INSPECTION FEES) (ENGLAND) REGULATIONS 2022

2022 No. 830

1. Introduction

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

2. Purpose of the instrument

2.1 This statutory instrument amends legislation relating to inspections of utility street works by highway authorities. Authorities carry out inspections to check compliance with statutory guidance relating to the safety of works' sites and with standards for reinstating the road once works have been completed (returning the road to the state it was in before the works as far as is possible). This instrument introduces a new performance-based inspections regime that will mean the number of inspections carried out and paid for by utility companies will be based on their failure rates, so that those with higher levels of compliance will be inspected less and the worst performing utility companies will be inspected more. A utility company's performance will be assessed every three months and they will move up and down bands that set how frequently they will be inspected in the following three months.

2.2 The instrument also amends the method of calculating inspection units to a simpler method based on the duration of works. Inspection units are used as the basis for calculating the number of sample inspections that are carried out.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

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

6. Legislative Context

6.1 Street works are carried out by utility companies (water, gas, electricity and telecommunications) on the public road network to install, repair or maintain services.

6.2 The main legislation relating to street works is Part 3 of the New Roads and Street Works Act 1991 (c. 22) ("the 1991 Act") which, amongst other things, requires compliance with safety standards at works sites, in particular to the signing, lighting and guarding of sites; requires the reinstatement of the road once works have been

completed; and provides highway authorities with powers to inspect sites during and after works.

6.3 Current regulations (The Street Works (Inspection Fees) (England) Regulations 2002[1]) (S.I. 2002/2092), and statutory guidance (the code of practice for inspections[2]) set out the regime for inspecting reinstatements. Inspections check for compliance with the standards set out in technical statutory guidance (Specification for the Reinstatement of Openings in the Highway[3] (SROH)) and with the safety code of practice[4]). The SROH sets out a range of standards for reinstating different types of roads, with higher standards for roads which carry higher volumes of traffic. Regulations allow highway authorities to charge for a sample number of inspections to be carried out which is capped at 30% of the number of inspection units – up to 10% while works are taking place, up to 10% within 6 months of the reinstatement being laid and up to 10% up to two years later or three years for deep excavations to check the reinstatement is still performing. Inspection units are based on a complicated method of calculation involving the length and number of excavations. The prescribed charge is £50 per inspection.

6.4 Section 58 (inspection fees) of the Traffic Management Act 2004 (c. 18) ("the 2004 Act") broadened the regulation making powers of the Secretary of State in relation to the setting of fees for the inspection of utilities works. Section 58(2) substituted a new section 75 of the 1991 Act which widened the Secretary of State's regulation making power; new section 75(3) enables regulations to provide for different provision to be made according to an undertaker's previous performance. Section 58(2) was commenced for the purpose of making these Regulations (and for all other purposes) by the Traffic Management Act (Commencement No. 11) (England) Order 2022 (No 649 c. 35).

7. Policy background

What is being done and why?

7.1 Approximately 2.5 million street and road works are carried out in England each year. Works can cause significant disruption to people's journeys and congestion which has an economic cost. Poor reinstatements can affect the integrity of the road, leading to potholes forming, uneven pavement surfaces and, on occasion, parts of the road sinking. Street and road works are a heavily regulated area to which a range of primary and secondary legislation applies, as well as statutory and non-statutory guidance. The aims of the legislation are to ensure effective planning and coordination of works, safety and that the road is reinstated properly after works have been completed. The legislation gives a range of powers to highway authorities to enforce the legal requirements through inspections and penalties. It also requires a number of notifications and registrations to support the operation of the regime.

7.2 The Government has worked with the sector in recent years to implement a range of measures to help ensure that works are planned, managed and co-ordinated effectively

[1] https://www.legislation.gov.uk/uksi/2002/2092/contents/made
[2] https://www.gov.uk/government/publications/street-works-inspections
[3] https://www.gov.uk/government/publications/specification-for-the-reinstatement-of-openings-in-highways
[4] https://www.gov.uk/government/publications/safety-at-street-works-and-road-works

to improve consistency and communication across the sector, to improve performance, and to make accurate and up-to-date information available to road users.

7.3 Recent Government initiatives have included:

- The introduction of the DfT's Street Manager digital service which, since July 2020, is being used by every utility company, highway authority and their contractors in England to plan, manage and communicate road works. They also use Street Manager to register reinstatements, record the outcome of inspections and to issue penalties. Real time data on live and planned works is now being streamed here: https://www.gov.uk/guidance/find-and-use-roadworks-data
- The introduction of an updated Specification for the Reinstatement of Openings in the Highway[5] (SROH version 4) – the first for 10 years – which came into force as statutory guidance on 10th May 2021. This sets out the technical standards for utility reinstatements following works.
- The amendment of Regulations (the Street and Road Works (Amendments Relating to Electronic Communications) (England) Regulations 2020 (S.I. 2020/122[6]) in July 2020 to support the introduction of Street Manager and requiring, for instance, notices to be sent within two hours of works starting or stopping on weekdays.

7.4 The Government consulted between May and July 2021 on additional reforms to regulations covering street and road works[7]. These reforms came to light during the development and introduction of Street Manager, the update to the Coordination Code of Practice[8] and ongoing work to improve the street works inspections' regime. They were also aimed at supporting the Government's Manifesto commitment to roll out full fibre and gigabit-capable broadband to every home and business across the UK by 2025. Works by telecoms companies currently account for one third of all works, and this number is estimated to triple over the next few years as a result of broadband roll-out and installing and upgrading networks.

7.5 The current inspections regime means that all utility companies are subject to, and pay for, the same level of inspections no matter how good they are at complying with the standards set out in the SROH and the safety code of practice. The average failure rate is currently 9% - the best performing larger utility's failure rate is 2% and the worst performing utility is failing 63% of its inspections.

7.6 In addition to other proposals, the Government therefore consulted on three changes relating to street works inspections to improve the regime so that it encouraged and rewarded good performance, focused resources on inspecting poor performers and introduced a more responsive regime. The overall aim is to improve the quality of reinstatements and integrity of the highway, and performance by utility companies. The three proposals were to:

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[5] https://www.gov.uk/government/publications/specification-for-the-reinstatement-of-openings-in-highways

[6] https://www.legislation.gov.uk/uksi/2020/122/made

[7] https://www.gov.uk/government/consultations/street-manager-and-permit-scheme-changes

[8] https://www.jaguk.org/documents/code-of-practice-for-the-co-ordination-of-street-works-and-works-for-road-purposes-and-related-matters-haucengland-edition

- use performance to calculate the number of sample inspections carried out each year so that poor performers are inspected more frequently;
- amend the way an inspection unit is calculated; and
- consolidate the fee that needs to be paid for re-inspections of reinstatements that have failed a previous inspection.

7.7 In response to the 2021 consultation, respondents supported both the principle of performance-based inspections and simplifying the method of calculating inspection units. However, they believed the detailed proposals presented needed to be simplified. The DfT therefore issued a follow-up paper in February 2022 for comment which included some amended proposals on these two areas. Responses to that paper showed support for the amended proposals.

7.8 This instrument will therefore introduce a performance-based sample inspection regime. From 1st April 2023, those utility companies with a failure rate (i.e. those that fail to meet the standards set out in the SROH or the safety code of practice) of less than 15% in the previous 12 months (i.e. they fail fewer than 15% of the inspections that are carried out) will be put into a starting band/sample rate of 30% for the first quarter (three months) of that financial year. Those with a failure rate of 15% or higher will be put into a starting band of 50%. This will mean that either 30% or 50% of their reckonable units of inspection will be inspected.

7.9 The method of calculating inspection units will be amended so that works' duration is used. This is a simpler method than is currently used and which is based on a complicated method of calculation involving the length and number of excavations. Works' duration was the most supported in the follow-up consultation and will mean consistency with the approach taken in Scotland.

7.10 Street Manager records the outcome of all inspections and the previous 2 years' data will be used to calculate the number of inspection units at the start of April 2023. This will revert to using an average of the previous 3 years from April 2024.

7.11 This instrument also introduces the following banding for failure rates that will be assessed each quarter. Utility companies' inspection rates will rise, fall or remain the same based on the number of inspections the authority and the utility company agree failed to meet the required standard:

- A 0%-9.99% failure rate will result in a decrease of 5 percentage points in the number of chargeable inspections in the following quarter. This reflects the sector's acknowledgment that a failure rate below 10% represents an acceptable level of performance across the three categories of inspections
- A 10%-14.99% failure rate will result in no percentage change in chargeable inspections in the following quarter. This aligns with the assessment that the starting baseline rate of 15% or above is deemed extremely poor performance
- A 15%+ failure rate will result in an increase of 5 percentage points in the number of chargeable inspections in the following quarter

7.12 There will be no cap on the percentage of inspections that can be carried out. If a utility company starts at the 50% rate, it will take 2.5 years to reach 100% and we would expect that the company would take action to improve compliance at a much earlier stage. 20% will be the lowest rate of inspections to ensure all utility companies have some inspections carried out.

7.13 At least 5% of inspections must be carried out each of category A (whilst works are taking place), category B (within 6 months) and category C inspections (within 2 or 3 years). This will mean that highway authorities will have greater flexibility to focus inspections on one particular category if a utility company needs to improve those.

7.14 The third change which was included in the consultation - to address the consolidation of the fees for follow-up inspections of reinstatements – will be implemented through updated statutory guidance.

7.15 Other proposals included in the consultation are being delivered by a separate instrument which is being laid on the same date as this instrument – The Street and Road Works (Miscellaneous Amendments) (England) Regulations 2022 - and through updates to other statutory guidance issued under the 1991 Act or the 2004 Act.

8. European Union Withdrawal and Future Relationship

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 There are no plans to consolidate the relevant legislation.

10. Consultation outcome

10.1 The DfT consulted on these measures between May and July 2021: https://www.gov.uk/government/consultations/street-manager-and-permit-scheme-changes.

10.2 118 responses to the consultation were received from highway authorities, utility companies, and a small number of representative groups and third-party suppliers. Almost all the proposals were supported. The only one that was not supported was in relation to flexi permits and this proposal is not being taken forward at this time.

10.3 See paragraphs 7.4-7.10 above for a summary of the consultation outcome. Full details and the Government's response, which includes the findings of the follow-up paper we issued in February 2022, can be found here: https://www.gov.uk/government/consultations/street-manager-and-permit-scheme-changes

11. Guidance

11.1 The inspections code of practice will need updating before the amendments included in this instrument come into force. This will be updated, and consulted on, as other amendments are being made, and published before this instrument comes into force in April 2023. It can be found here:

https://www.gov.uk/government/publications/street-works-inspections

12. Impact

12.1 There is no, or no significant, impact on business, charities or voluntary bodies.

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because of the low level of impact.

12.4 An Impact Assessment was prepared to accompany the consultation. Following responses, the Government has decided not to proceed with one of the proposals relating to flexi permits. Removing this measure has meant the impact of the proposals which are being implemented falls below the threshold required for an Impact Assessment to be prepared.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. However, the impact is low and below the threshold for which an Impact Assessment needs to be prepared.

14. Monitoring & review

14.1 The Minister has confirmed that a review provision is not appropriate for these regulations as the benefits of the amendments outweigh any potential adverse effects.

14.2 The approach to monitoring of this legislation is via a Post Implementation Review which will be carried out in 2025.

15. Contact

15.1 Sally Kendall at the Department for Transport, Telephone: 07826 902195 or email: sally.kendall@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Anthony Ferguson, Deputy Director for Traffic and Technology, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Baroness Vere of Norbiton at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.