

EXPLANATORY MEMORANDUM TO
THE STREET WORKS (CHARGES FOR OCCUPATION OF THE HIGHWAY)
(ENGLAND) REGULATIONS 2012

2012 No. 425

- 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 The purpose of the instrument is to allow local authorities in England, subject to the approval of the Secretary of State, to implement “lane rental” charging schemes. “Lane rental” would involve utility companies and others having to pay a daily charge in respect of the street works they carry out on the busiest parts of the road network. The intention is to provide a financial incentive for those carrying out works to reduce the resulting disruption to road users.

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

3.1 None

4. Legislative Context

4.1 This instrument revokes and replaces previously-existing Regulations made in 2001 under the same enabling powers. Pilot lane rental schemes were operated between 2002 and 2004 under those 2001 Regulations, but since then no further schemes were introduced. The Department for Transport has a business plan commitment to put in place new Regulations to allow further lane rental schemes to be implemented. As set out under “policy context” below, the intention is that future schemes should follow a different approach to the earlier pilots.

4.2 The Department’s written evidence to the Transport Select Committee’s inquiry into effective road and traffic management (published by the Committee in HC872 *Out of the jam: reducing congestion on our roads*) reaffirmed the Government’s intention to bring forward new Regulations about lane rental.

5. Territorial Extent and Application

5.1 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

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. It confers powers on the Secretary of State (as respects England) to require street works undertakers to pay prescribed charges to approved authorities (i.e. highway authorities that have been approved for this purpose by the Secretary of State). The prescribed charges (commonly referred to as “lane rental” charges) would be related to the duration of works. Approved authorities would have wide discretion to reduce or waive charges.

7.3 The purpose of lane rental charges would be to provide a financial incentive for those carrying out works to reduce the resulting disruption, for example by completing those works more quickly and/or outside of peak traffic hours. It is anticipated that the utility regulators, when setting regulated prices, would make an allowance for costs that would be incurred by an efficient utility company as a consequence of lane rental charges. However, this need not dilute the incentive provided by charges, because lane rental charges would not automatically be passed through to consumers “pound for pound”. Once a utility’s regulated price has been fixed, the utility can reduce its costs (and hence increase profit) by taking action to reduce its exposure to charges.

7.4 Regulations about lane rental were made in 2001, following which the Secretary of State approved time-limited “pilot” schemes in Camden and Middlesbrough. Following the end of those pilot schemes in 2004, no further lane rental schemes were approved.

7.5 The Government is now interested to see a small number of local authorities pioneer a different approach to lane rental, in which charges would need to be targeted (only on the very busiest streets in the area concerned) and avoidable (in the sense that charges should apply only at the busiest times during the week, so that works promoters can avoid charges by completing their works at times of lower traffic flow).

7.6 Although the Government is supportive of non-regulatory approaches to reducing the disruption caused by works, it has concluded that there is a case for investigating the contribution that lane rental could make on the very busiest streets, where the costs of works-related congestion can run into thousands and sometimes tens of thousands of pounds a day.

7.7 The new Regulations provide for a daily charge of £2,500, subject to discretion for approved authorities to reduce or waive the charge. When seeking the Secretary of State's approval, an authority would need to set out its proposed approach to exercising that discretion.

7.8 The Government is at this stage contemplating only a very small number of pioneer schemes, and has published guidance to local authorities who might be interested in applying to run a pioneer scheme. Early evaluations of the performance of these pioneer schemes would inform future decisions on whether lane rental could usefully play a wider role.

- Consolidation

7.9 This instrument revokes and replaces an earlier instrument.

8. Consultation outcome

8.1 The proposals were subject to a public consultation which ran from 22 August to 31 October 2011. A ten-week consultation period was considered appropriate as the Department had already discussed its proposals with representatives of local authorities and the utility sector via the Highway Authorities and Utilities Committee (HAUC(UK)), and because full consultation would also need to be carried out by local authorities on any specific proposals for lane rental schemes.

8.2 Over 150 responses were received from a combination of utility companies and contractors, local authorities, their representative bodies and other interested parties. There was a clear divergence between the views of utility companies (who opposed the principle of lane rental charging) and of local authorities and other respondents (who were mostly supportive of the principle).

8.3 Various detailed changes have been made to the Regulations and accompanying guidance in light of the consultation responses, with key changes including:

- guidance now indicates Secretary of State is prepared to contemplate up to three local "pioneer" schemes (one in a major urban area, one or two elsewhere), in places where road works permit schemes have already been put in place. This responds to concerns that two schemes may not give a sufficiently diverse sample on which to base future judgements about lane rental. This does not compel the Secretary of State to approve as many as three schemes (or indeed any schemes); she would do so only if sufficient high-quality proposals emerge.

- guidance now indicates that, to secure Secretary of State approval, schemes will now be expected to provide a short (e.g. 24-hour) exemption from charges for genuine emergency works that cannot be deferred to off-peak times because of danger to public safety or damage to property. This is consistent with the principle that charges should not be applied where the works promoter has no opportunity to avoid them. The guidance suggests how local authorities can ensure this exemption is not subject to misuse.
- draft regulations amended to be clear that scheme revenues may be used to fund scheme evaluation, in addition to measures to reduce the traffic disruption and other adverse consequences (eg noise, environmental impacts, safety issues arising from increased night-time working) that result from street works.
- guidance now gives a stronger signal that authorities should apply lane rental to their own highway works in the same way as they do to utilities', consistent with the "parity" principle established in the Network Management Duty Guidance issued by the Department for Transport in 2004. In cases where the highway authority contracts out their highway works to a third party, this is likely to involve daily charges being applied by contractual means; in other cases, the authority could calculate "shadow" charges and apply the resulting sums to the same purposes as revenues received from street works undertakers.

9. Guidance

9.1 On 26 January 2012, the Department published guidance to local highway authorities who might be interested in applying for approval to run a lane rental "pioneer" scheme. A slightly revised version is being published at the same time as laying the Regulations before Parliament, and is available at www.dft.gov.uk.

10. Impact

10.1 The impact on business, charities or voluntary bodies is expected to be positive overall. Costs to works promoters (which will usually be large businesses) are expected to be outweighed by the benefits to the general business community arising from reduced traffic congestion, and local authorities seeking the Secretary of State's approval will be expected to demonstrate that this will be the case in relation to their specific scheme proposal.

10.2 The impact on the public sector is that local authorities operating lane rental will benefit from additional revenue, which (once the costs of scheme administration and evaluation have been defrayed) the Regulations require to be expended on measures aimed at reducing the disruption and other adverse impacts resulting from street works.

10.3 An Impact Assessment is attached to this memorandum and will be published alongside the Explanatory Memorandum on the www.legislation.gov.uk website.

11. Regulating small business

11.1 The legislation applies to small business. Businesses (including many small businesses and micro-businesses) will benefit from the reduction in traffic congestion that lane rental is expected to deliver. Meanwhile the costs of lane rental will be incurred by the organisations responsible for carrying out the works, which are generally large utility companies.

11.2 The Department is not aware of any micro-businesses carrying out street works. Although the large utility companies often contract and sub-contract work out, sometimes to smaller organisations, legal liability for the charges will still rest with the utility rather than the contractor. Accordingly, while micro-businesses will derive significant benefit from lane rental, it is not expected that any such businesses will be liable to pay charges.

11.3 To minimise the impact of the requirements on small firms employing up to 20 people, local authorities seeking approval for lane rental will be expected to show what steps they have taken to minimise administrative costs for works promoters.

12. Monitoring & review

12.1 The Government will expect a robust evaluation plan to be built in to any proposed scheme that is submitted for approval by the Secretary of State. Each scheme's evaluation plan would need to set out the evidence that will be collected to enable a proper evaluation to take place, and the pre-lane rental benchmarks against which the comparison would be made. Authorities will be expected to evaluate their schemes at least annually.

12.2 It is expected that an overall evaluation of the impact of the Regulations will take place in 2017, in time to allow decisions to be taken on whether the expiry date in the Regulations should be amended or whether they should be allowed to expire.

13. Contact

Matt Tyler at the Department for Transport (Tel: 020 7944 8046 or email: matt.tyler@dft.gsi.gov.uk) can answer any queries regarding the instrument.