

HIGHWAYS, WALES

EXPLANATORY MEMORANDUM TO:

THE STREET WORKS (FIXED PENALTY) (WALES) (AMENDMENT) REGULATIONS 2008

This Explanatory Memorandum has been prepared by the Economy and Transport Department and is laid before the National Assembly for Wales in accordance with SO 24.1.

Description

1. The Street Works (Fixed Penalty) (Wales) (Amendment) Regulations 2008 ("the Regulations") amend The Street Works (Fixed Penalty) (Wales) Regulations 2008 made on 17 January 2008. The Regulations prescribe the form, manner of service and level of penalties for the fixed penalty notices (FPN) that street authorities may give in relation to six offences specified in Schedule 4A to the New Roads and Street Works Act 1991 ("the 1991 Act"), as introduced by the Traffic Management Act 2004 ("the 2004 Act"). They also deal with a number of related matters. The amendment to the original Welsh language version of the Regulations replaces "brintiadwy" (meaning "printable") with the word "brintiedig" (meaning "printed").

Legislative background

2. Part 3 of the 1991 Act makes provision in relation to street works carried out in England and Wales. Welsh Ministers now exercise these powers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

3. 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.

Purpose and intended effect of the legislation

4. The Regulations are intended to:

- ensure that local authorities receive better quality information to provide for the better co-ordination of street works;
- encourage greater compliance with the various duties and obligations under Part 3 of the 1991 Act, especially with respect to notices.

Background

5. The Regulations are needed to implement the new power to issue fixed penalties for certain offences. The associated statutory Code of Practice has been revised to take account of technological progress and to improve some of the processes.—

6. The intention is to encourage greater compliance with the noticing requirements of the 1991 Act, which in turn will enable street authorities to be better placed to fulfil their duty to co-ordinate the execution of all works in the highway, including their own.

7. If the requirements to provide street authorities with notices are adhered to then there should be a limited need for authorities to issue fixed penalty notices.

Implementation

8. The coming-into-force date for these Regulations is 12 May 2008.

9. Should this legislation be annulled, the result would be unnecessary disruption to road users, local residents and businesses, and worsening congestion, safety and car pollution. It would also fetter the ability of local street authorities to fulfil their network management duty.

10. The coming-into-force date for similar legislation for England is also 12 May 2008.

11. Under the 1991 Act the Welsh Ministers provide statutory guidance that is available together with the Technical Specification for EToN. Transport Wales will also undertake a number of roadshows to highlight the main changes in the primary and secondary legislation and the statutory Code of Practice. They will be organised through the Welsh Highways and Utilities Committee to get as wide a coverage of practitioners as possible. There will be 1 or 2 roadshows during the months between laying the Regulations and their coming into force on 12 May 2008 to allow for the development of the necessary software, its installation and testing and to allow highway authorities and undertakers to train their staff in the new regime.

Consultation

12. A consultation was undertaken and details are contained in the Regulatory Impact Assessment.

Regulatory Impact Assessment

13. A Regulatory Impact Assessment follows:

THE STREET WORKS (FIXED PENALTY) (WALES) (AMENDMENT) REGULATIONS 2008

Background

1. The noticing system, established under the 1991 Act, requires utilities to give notice of proposed street works to the local street authority. These Regulations form part of the powers contained in the 2004 Act to improve coordination and ensure that street works are carried out in a timely and efficient manner.

2. Two types of bodies will be affected by the Regulations: (i) the 23 highway authorities (County Councils, and Transport Wales), and (ii) some 200 utilities who have the right to carry out works in the street.

Options

Option 1: Do nothing

3. The Assembly Government believes that to do nothing is not an option. The strengthening of powers for local street authorities to enforce the noticing system will reduce the impact of street works on road users, and congestion. It will also enhance the ability of local street authorities to fulfil the network management duty.

Option 2: Improve enforcement of obligations

4. The principles of the scheme are:

- it is up to the street authority to decide whether an offence has been committed and whether the giving of an FPN is the most appropriate action;
- FPNs are not intended to provide surplus revenue. The street authority should therefore not plan for any net proceeds emerging from this scheme.
- it is the responsibility of the undertaker to manage the process of complying with the statutory duties and obligations under Part 3 of the 1991 Act.
- an FPN will be given to the undertaker promoting the works and not to any contractors who carry out the works.
- the 2004 Act sets a maximum fixed penalty of 30% of the maximum fine for each offence - £750 in the case of level 4 offences. Following discussions with the Home Office and considering comparisons of the fixed penalty amounts for other level 4 offences, the Regulations provide a fine of £120 with a discounted amount of £80, as shown in Table 1.
- if the undertaker pays either the full penalty or the discounted amount, as appropriate, then no further proceedings can be taken against the undertaker for the offence.
- if the undertaker does not pay the penalty within the 36 days, as extended where appropriate, the street authority may bring proceedings in the Magistrates' Court for the original offence.
- once an FPN has been given no proceedings for the offence may be commenced against the undertaker until the end of the period for payment of the penalty.

Table 1 – Fixed Penalty Scheme

Offence	Maximum Court fine	Full FPN amount	Discounted FPN amount
An offence under section 54 (5)	Level 4 (£2,500)	£120	£80
An offence under section 55 (5)			
An offence under section 55 (9)			
An offence under section 57 (4)			
An offence under section 70 (6) consisting of a failure to comply with subsection (3) or (4A)			
An offence created by regulations made under section 74 (7B)			
<p>No legal proceedings will be commenced if the full penalty amount of £120 is paid within 36 calendar days beginning with the day on which the FPN was given. This period may be extended by the street authority if they consider it appropriate.</p> <p>The discounted amount of £80 is applicable if payment is made before the end of the period of 29 calendar days beginning with the day on which the FPN was given.</p>			

Costs and Benefits

Sectors and groups affected

5. The sectors and groups affected by these Regulations are:

- Highway Authorities
- Local Authorities
- Utility Companies (gas, electric, telecommunications, water)
- Public (road users, pedestrians, householders)
- Businesses, as road users and as frontagers

Benefits

Social and environmental benefits

6. Any activity carried out in the street has the potential to cause disruption depending how long it lasts, its location, its scale and how it is carried out. The benefits of being able to better control these activities are:

- reduced occupation of the road by activities helps reduce congestion and maximises the use of the existing network, improving reliability and making journeys more predictable as well as making them faster. This makes journeys easier to plan and reduces the amount of wasted or unproductive time;
- as congestion is reduced, pollution is also reduced, with benefits for air quality and other aspects of the environment;
- business can operate more efficiently through the quicker and more reliable delivery of goods, service of and access to customers;
- people are able to reach their destinations more easily, saving time and effort;
- public transport can operate more reliably and provide a better service, potentially further relieving congestion on the road by attracting motorists onto public transport.

Economic benefits

7. The key direct benefit of the Regulations is the reduction in costs to local street authorities of enforcing the noticing system. Under the 1991 Act the offences detailed in these Regulations would have to be prosecuted in the Magistrate's Court and, following the latest consultation, Halcrow have estimated this would cost local street authorities £4.9m¹ (£0.7m in Wales) compared to £1.8m (£0.26m in Wales) if FPNs could be given for the same offences. Therefore the provisions in the Regulations will provide an estimated saving of £3.2m (£0.46m in Wales). The costs are detailed in Table 2.

¹ Based on 150 street authorities in England and 22 in Wales completing four prosecutions against the five main utility companies operating in their area per year. This is estimated to be sufficient to force a change in behaviour.

Table 2 - Halcrow's estimate of net benefit of FPN vs Prosecution				
	Benefit in England		Benefit in Wales	
	Prosecution	FPN	Prosecution	FPN
Cost of gathering evidence ²	£540,000	£540,000	£79,200	£79,200
Cost of preparing action ³	£1,080,000	£1,080,000	£158,400	£158,400
Cost of proceedings ⁴	£3,240,000		£475,200	
Cost of giving FPNs		£67,500		£9,900
Successful prosecution - Level 4 fine (cost to Statutory Undertaker) ⁵	£3,000,000		£440,000	
Successful Prosecution - Level 4 fine (benefit to society)	-£3,000,000		-£440,000	
FPN Charge (cost to Statutory Undertaker)		£252,000		£36,960
FPN Charge (income to local street authority)		-£252,000		-£36,960
Cost of administering income	£67,500	£67,500	£9,900	£9,900
	£4,927,500	£1,755,000	£704,700	£257,400
Net Benefit of FPN vs prosecution	£3,172,500		£457,300	

8. The key indirect benefit to be derived will be from reduced disruption from street works on the road network and the consequential impact on road users. Two studies have been carried out in recent years to try to assess the level of disruption caused by works in the street:

- Halcrow produced a report in July 2004 for DfT, which estimated the annual costs of disruption caused by utility works in England in the year 2002/03 at £4.3 billion. (Equivalent figures for Wales would be £0.43m).
- The National Joint Utilities Group ("NJUG") commissioned Professor Phil Goodwin to review Halcrow's findings. This study adopted a different approach and provided an estimate of up to a £1 billion for the cost of congestion caused by street works.

9. Although there is a large variation, it does confirm that the economic cost of congestion has a significant impact on the operation of the road network.

10. DfT consider that the Halcrow calculation is the more robust because its methodology draws on a large disaggregated database of street works. It is based upon the estimated annual number of street works of 1.1 million. This figure was extrapolated from a sample of 25 local authorities' notices and validated by the

² Based on half a person day at £180.

³ Based on one-person day at £360.

⁴ The cost of the legal teams of both the street authority and utility, assumed to be 3 hours for each side at £180/hour.

⁵ This is based on the assumption that the Courts realistically impose around 40% of the maximum level four fine or £1000 on average.

statutory undertakers. Halcrow have recently revalidated the number of works and the estimate is now some 1.2 million works a year. There is no similar research covering Wales, but with 120,000 works a year, the results of the Halcrow report can be linked in direct proportion to the works carried out by Utilities in Wales. The number of works by sector are shown in table 3:

Table 3: 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
Source Halcrow Group					

11. Halcrow were also commissioned to consider the level of benefits that the 2004 Act and amendments to the 1991 Act could deliver through its street works legislation. With the appropriate application of all the powers available to the street authorities, through these Regulations and other powers of direction, Halcrow consider that there could be a 10% reduction in the delay costs imposed by street works (see Annex A for more details). The benefit arising from Section 59 of the 1991 Act (improved coordination arising from a longer notice period as set out in regulations 8 and 9 of The Street Works (Registers, Notices, Directions and Designations) (No 2) (Wales) Regulations 2008 (Noticing Regulations) is estimated to be 5% (valued at £96.7m in England and £9.67m in Wales).

12. The increased likelihood of enforcement, due to the reduced costs involved, will encourage greater compliance with the Noticing Regulations, ensuring that the associated benefits are realised.

13. Ultimately, should the FPN system be successful, the number of FPNs will decrease proportionately to the increase in notice compliance as shown below.

Costs

14. Undertakers will only incur FPN charges if they commit fixed penalty offences. These costs are, therefore, avoidable.

15. It is not possible to predict how many FPNs will be given. There will be variations amongst differing authorities and according to the performance of the different utility companies. Work carried out by Halcrow following the latest consultation suggests that the number of FPNs given by authorities will be significantly less than previously estimated, about 3000 per year⁶ (440 per year in Wales). This follows closer examination of the Regulations and the associated Code of Practice, which advises that an FPN should only be given for an offence where the authority is satisfied that it could successfully take forward a prosecution if necessary. Halcrow therefore believe that FPNs are unlikely to be given at the rate previously estimated (90,000 per year). This means the potential cost to undertakers of FPNs would be £252,000 in England (£36,960 in Wales).

⁶ Based on 150 street authorities in England and 22 in Wales giving four FPNs to the five main utility companies operating in their area per year. This is estimated to be sufficient to force a change in behaviour.

16. This revised estimate is believed to be sufficient for local street authorities to demonstrate their intent and achieve the desired behaviour change in statutory undertakers.

17. Table 4 shows a range of scenarios that result in different costs for England and Wales: the accepted scenario that will result in FPN charges of £252,000; the previous estimate of £7.56m⁷; and the NJUG assumption of £72 million⁸. Figures for Wales are shown in brackets.

Table 4 – Halcrow’s estimates of FPN costs to statutory undertakers			
Assumption/Factor/Result	All Sectors (Wales)	All Sectors (Wales)	All Sectors (Wales) NJUG assumptions
Number of Works per Month	100,000 (10,000)	100,000 (10,000)	200,000 (20,000)
Number of Works per Year	1,200,000 (120,000)	1,200,000 (120,000)	2,400,000 (240,000)
Number of Notices per Works	5	5	5
Number of Notices	6,000,000 (600,000)	6,000,000 (600,000)	12,000,000 (1,200,000)
Error Rate	1%	3%	5%
Number of Notices in Error	60,000 (6,000)	180,000 (18,000)	600,000 (60,000)
Percentage of FPNs applied	5%	50%	100%
FPN Rate	£804 (90% discounted)	£804 (90% discounted)	£120
Total Charge	£252,000 (£25,200)	£7,560,000 (£756,000)	£72,000,000 (£7,200,000)

18. As mentioned above, local street authorities should experience a cost reduction from the Regulations, although FPNs should not be automatically generated and authorities should still be expected to have sufficient confidence, and therefore information, that they will be able to take forward a prosecution successfully if necessary.

⁷ Based on 1.2m works a year in England and 120,000 works a year in Wales, with five notices for each set of works, with an error rate of 3% and 50% of FPNs being applied with 90% of those served paying at the discounted rate.

⁸ Based on 2.4m works in England and 240,000 works in Wales (higher volume of work), an error rate of 5% with all FPNs applied and paid at the full rate.

Issues of Equity and Fairness

19. The penalty amount has been set so that it can act as a deterrent. The level of £120 (£80 discounted amount) is significantly below the maximum of £750 that could have been set for these seven offences (30% of a level 4 fine).

20. The FPN system will be applicable to all utility companies (electricity, gas, water and telecommunications) and to section 50 licensees. From the groups affected, it is possible that the impact on section 50 licensees could be greater than the impact on the utility companies.

Summary of costs and benefits

21. In analysing the additional costs and benefits of the FPN scheme it is useful to consider the cost/benefit case based on a 'do nothing' option of taking the prosecution route and examining the differences the FPN route offer. Taking this approach, we can discount costs that are 'common'; for example, the cost of collecting sufficient information to pursue a prosecution would be common to both approaches. In respect of the overall cost/benefit to society, the FPN charges and the cost of fines under the prosecution route can also be disregarded as in both cases there is no net cost, or benefit, to society.

22. The costs and benefits that are therefore significant are the court costs incurred when a prosecution is pursued versus the administrative burden of managing an FPN scheme. The Assembly Government accepts Halcrow's suggestion that four actions per year per utility per local street authority will be sufficient to force the desired change in behaviour, meaning the net benefit to society will be in the order of £3.2m in England and £457,300 in Wales.

23. The Regulations will deliver benefits through reduced disruption for all road users and reduced negative environmental effects of utility works.

24. It should also be borne in mind that the number of FPNs should decrease proportionately to the increase in notice compliance.

Competition Assessment

25. It is not expected that the FPN scheme will have a significant impact on competition. All undertakers are subject to the same regime. However, particularly in the telecommunications field, the impact of the regime may be felt disproportionately. This is because of the domination of the field by a few large companies, with the remaining companies being relatively small. Nevertheless, the costs imposed are avoidable as they will only be incurred if the undertaker fails to comply with the duties and obligations placed upon them by the legislation.

26. It is also possible that some businesses may incur greater costs in setting up new systems to improve the management of their works. However, it is unlikely that such costs will be sufficient to have implications for competition.

Consultation

27. The policy and detailed changes have been developed in association with the Highway Authorities and Utility Committee (HAUC UK). HAUC UK is a body that assists Ministers in arriving at proposals for new street works legislation. It is made up of representatives from local highway authorities (including Wales) and the National Joint Utility Group, which represents undertakers that are utility companies.

28. The proposals have been subject to two rounds of consultation. The first took place in 2005 and a number of changes were made in response.

29. Three Working Groups, with members appointed by HAUC UK, including representatives from Wales, met to consider further policy changes and the outcome of the follow-up consultation in 2006 in England.

30. At the same time as England's 2nd consultation a separate but similar consultation was carried out in Wales. A list of the consultees is at Annex B. 18 responses were received and a list of those who responded is at Annex C. The majority duplicated responses to the English consultation. The comments raised by those organisations that responded to the Welsh consultation have been taken into consideration and a Report on the consultation is at Annex D.

31. As a result of the consultation, the Regulations come into force 6 weeks after those related to noticing, to allow bedding-in problems to be resolved without the threat of FPNs.

Post Implementation Review

32. The Assembly Government together with DfT intends to conduct a review within 2 years of the Regulations coming into force to assess the efficacy of the fixed penalty notice scheme. The precise remit of the review is still to be agreed. However it is likely that it will include: an examination of the costs of running the FPN scheme; the number of FPNs being given; the level of the penalty for each offence; and, the benefits arising from the scheme such as any improvement in the quality of notices being given, any improvement in co-ordination and any reduction in the levels of disruption.

33. If desired, the Welsh Ministers may make an order providing for offences under Part 3 of the 1991 Act relating to any street works to become (or cease to be) fixed penalty offences.

Summary

34. Under the 1991 Act, offences related to the noticing system can be prosecuted in the Magistrates' Courts. However, there is a relatively low prosecution rate because the costs for the Authority in taking a prosecution to Court are high compared to the fines and level of costs awarded. The Regulations provide an alternative that is less costly for both sides and a more constructive way of dealing with these offences, however prosecution through Magistrates' Court is still a possibility.

35. The saving in costs of FPNs versus prosecution is estimated to be £0.457m in Wales. This will increase the likelihood of enforcement and drive a behaviour change that will contribute to improved traffic flow, by improving the quality and timeliness of information provided to street authorities by undertakers in the various notices under the 1991 Act. Thus better equipping street authorities to fulfil their network management duties and co-ordinate works and identify measures to mitigate or minimise the potential disruption to road users.

36. The Regulations will contribute to the delivery of benefits through reduced disruption for all road users and reduced negative environmental effects of utility works.

37. The costs and benefits detailed in this assessment, and summarised in Table 5, are indicative but based on thorough assessment of the impact of these Regulations. DfT together with Transport Wales will also be evaluating the impact of the 2004 Act, including the Regulations, following implementation and baseline data will be collected beforehand.

Table 5 - Summary of costs and benefits in Wales		
Option	Total benefit per annum	Total costs per annum
a. Do nothing	-	£0.7m
b. Provision of FPN scheme, for the enforcement of Part 3 of the 1991 Act	£0.46m - Saving versus prosecution Total - £0.46m	£0.26m Total - £0.26m

Calculations of Potential Road User Delay Savings Arising from Street Works

Background

Part of the underlying rationale of both the 1991 and 2004 Acts is that coordination and cooperation will improve the efficiency of street works. Occupation of road space by utility companies, developers and the authority's themselves is inevitable. The 2004 Act affords street authorities the opportunity to improve the coordination of works through better liaison arrangements, more effective coordination meetings and, where necessary, the more robust use of the powers available to them. An example of how improved coordination will be aided is the increased notice periods for planned works (section 59 of the 2004 Act).

Consultants, Halcrow, were commissioned to provide an estimate of the potential for reducing the road user delay arising from utilities street works. This commission considered the use of all powers for local street authorities to manage street works arising from the 1991 and 2004 Acts. To undertake this assessment, Halcrow assumed that delay is directly proportional to traffic flow thus enabling a simple estimate of delay saving to be made. As a base assumption the 'traffic distribution by time of day on all roads', from DfT's 2005 transport statistics, has been used (as set out in table 1A). Whilst this may be a simplistic approach it does indicate the potential savings that may potentially be achieved through proper application of the powers.

Available powers

There is a range of specific powers available to local street authorities enabling them to take measures to ensure that delay arising from street works is kept to a minimum. The specific powers considered are:

1) Section 56 – power to give directions as to the timing of street works

This provision gives the street authority the power to direct the timing of street works both in respect of the time of the day and days of the week. Halcrow considered four different scenarios for changing working periods; (1a) shift the working day forward by one hour, (1b) shift the working day forward by two hours, (1c) move to night time working, and, (1d) move to restricted night time working. These scenarios are summarised in table A1, against the potential delay saving benefit:

Scenario	Planned Occupation		Directed Occupation		Delay Saving Benefit
	Working Time Period	Total Traffic Flow	Working Time Period	Total Traffic Flow	
(1a)	08:00 to 17:00	58.1 %	07:00 to 16:00	57.3 %	0.8 %
(1b)	08:00 to 17:00	58.1 %	06:00 to 15:00	54.2 %	3.9 %
(1c)	08:00 to 17:00	58.1 %	21:00 to 06:00	9.4 %	48.8 %
(1d)	08:00 to 17:00	58.1 %	00:00 to 05:00	2.6 %	55.5 %

In respect of the directions on timing it has been assumed that a significant number of directions could be given to shift the time of works by an hour to avoid specific peak flows. Halcrow estimate that one in 5 works could be directed in this way. A

more significant direction of two hours could perhaps be applied to a further 10% of works. In respect of directing works to be undertaken outside the daytime period there is less scope for this and Halcrow estimate that only 3% of works could be directed to be undertaken at night with a further 1% being directed to be undertaken in a restricted night-time period (commencing after midnight). Clearly such directions would only be applied on the busiest of streets.

2) Section 56A - powers to give directions as to placing of apparatus

This provision gives the street authority the power to direct that apparatus is not placed in a street where disruption to traffic would be avoided by doing so. Halcrow consider that directing undertakers not to place apparatus in a street will only be applicable in a particular set of circumstances. There is little evidential basis for making an assessment and Halcrow estimate that 1 in 10,000 works could potentially be directed in such a way.

3) Section 66 - avoidance of unnecessary delay or obstruction

This provision gives the street authority the power to require an undertaker to mitigate or discontinue the disruptive effects of street works. This is perhaps one of the least well applied provisions of the 1991 Act. There are two specific scenarios for the use of this power that Halcrow considered:

(3a) requiring an undertaker to expedite works by working continuously until they are complete; and

(3b) requiring road space to be given back to other road users when works are not being executed.

In the first scenario it is difficult to estimate the potential delay saving benefit however it is recognised that works sites are often left unattended for long periods of time between the different aspects of work being undertaken, for example, one gang will set up the traffic management, another gang will excavate, another gang will come along and undertake the repair, and so on. It is clear that a substantial number of works are left with signing and guarding in place but no activity actually taking place. Halcrow believe that a reduction of 10% in works duration could be achieved through use of powers available under Section 66 of the 1991 Act requiring undertakers to expedite their works and that this could be applied to a quarter of all works.

In respect of giving road space (capacity) back to traffic, a simple scenario has been considered where the traffic management is removed at the end of each working day and replaced at the start of the following working day. Using the traffic flow distribution discussed above it can be seen that, based on the removal of the restriction in capacity from 17:00 in the evening to 08:00 in the morning, a potential delay saving benefit of 41.9% can be achieved. But these arrangements could only be applied to around 3.6% of works. This approach could be taken on 10% of all footway and verge works, which represent approximately 35.7% of all street works.

4) Section 74 - charge for occupation of the highway where works unreasonably prolonged

These powers are already being used extensively by street authorities in England although it is recognised that the powers could be better used. For the purposes of this Annex it is assumed that a 5% reduction in works durations could be achieved

through more robust and targeted application of the overrun charges and through better challenging of proposed works durations. Halcrow estimate that the provisions could be better applied in respect of 22.6% of works undertaken (this is the percentage of works to which the section 74 charging scheme is to apply). The introduction of Section 74 in Wales will be the subject of separate regulations in due course.

5) Better opportunities exist to coordinate works through the provision of extended notice periods

Halcrow believe there will be a clear benefit to the management and coordination of street works through the longer notice periods for the different categories of work. The increased notice periods for all planned works will offer street authorities greater opportunity to coordinate the proposals of undertakers with their own programme of works and other activities of which they are aware. It will also provide undertakers with greater opportunity to coordinate and cooperate with each other in respect to site or trench sharing opportunities. The three month advance notice period for major works and the three day notice for minor work provide the street authority more opportunity to coordinate and, when necessary, to issue a direction on timing to the undertaker. Halcrow estimate that a reduction in delay in the range of 5%-10% could be achieved in respect of the extended notice period.

Summary of Potential Delay Savings

Table A2: benefits arising from the 1991 and 2004 Act powers					
Power	Scenario	Potential Saving	Applicability	Total Benefit	Value p.a. (cost of delay (£4.30bn))
Section 56	Scenario (1a) - Direct Timing	0.8 %	20.0 %	0.16 %	£6.9m
	Scenario (1b) - Direct Timing	3.9 %	10.0 %	0.39 %	£16.8m
	Scenario (1c) - Direct Timing	48.8 %	3.0 %	1.46 %	£62.8m
	Scenario (1d) - Direct Timing	55.5 %	1.0 %	0.56 %	£24.1m
Section 56A	Scenario (2) - Direct Location	50.0 %	0.01 %	0.005 %	£0.2m
Section 66	Scenario (3a) - Expedite Works	10.0 %	25.0 %	2.50 %	£107.5m
	Scenario (3b) - Regain Capacity	41.9 %	3.6 %	1.50 %	£64.5m
Section 74	Scenario (4) - Reduce Overruns	5.0 %	22.6 %	1.13 %	£48.6m
Section 59	Improved Coordination	5.0%	38.4 %	1.92%	£96.7m
Total					£428.1m

It can be seen that by factoring the potential saving by the applicability of the powers discussed an estimated total delay saving benefit of in excess of 7.7% can be achieved against the delay costs. If the improved coordination is also taken into account, a total delay saving benefit of nearly 10% may be achieved. Halcrow consider that this is a conservative estimate of the range of potential delay savings.

It should be noted that, with the exceptions of the enhanced co-ordination powers and those available under Section 56A, all of the powers discussed above are available to street authorities now and have been available for some time. The use of these powers may be refocused and refreshed following the implementation of the 2004 Act and particularly the introduction of the Network Management Duty on local traffic authorities.

It is, of course, important to consider the additional costs to utility companies arising from the more pro-active use of powers by street authorities. However, by taking a cooperative approach and working closely with street authorities utility companies should be able to keep additional works costs to an absolute minimum. Ultimately, if utilities take into account traffic disruption as part of their planning process there will be little or no need for street authorities to apply the interventions discussed above.

Consultation List

186K Ltd
360 Atlantic (UK) Ltd
Advanced Radio Telecom Ltd
Advantica Technologies Limited
Age Concern Cymru
Albion Water Ltd
Aquila Network Services Ltd
Arboricultural Association
ARC Recycled Materials
Associated British Ports
Association for Geographic Information
Association for Road Traffic Safety and Management
Association of Chief Police Officers
Association of Consulting Engineers
Atlas Internet (UK) Limited
Automobile Association
AXS Telecom (UK) Ltd
Barrie Highfield & Associates
BDS Rights of Way and Access Committee
Belle Group
Brecon Beacons National Park Authority
Briggs Oil Ltd
British Airport Authority
British Association of Conference Destinations
British Cycling Federation
British Motor Cyclists' Federation
British Ports Association
British Retail Consortium
British Waterways
Broadband Optical Access UK Ltd
BT
BT Regulatory Affairs
Cable & Wireless Business HKT Pacific (UK) Ltd
Cable & Wireless Communications
Campaign for the Protection of Rural Wales
Caravan Club
Chartered Institute of Building
Chartered Institute of Logistics and Transport
Chief Executives and Chief Technical Officers of County Councils in Wales
Signal Global Communications UK Ltd
Civic Trust
Civil Engineering Contractors Association
Colas Limited
COLT
CompleTel UK Limited
Concert Communications Ltd

Confederation of British Industry (Wales)
Confederation of Passenger Transport UK
Connect Utilities Ltd
Consignia
Construction Confederation
Construction Industry Training Board
Core Telecommunications Limited
Countryside Council for Wales
Cyclists Public Affairs Group
Cyclists' Touring Club
Dee Valley Water Plc
Disability Wales
Disabled Persons Transport Advisory Committee
Dolphin Telecom Ltd
Dwr Cymru Welsh Water
Dynegy UK Communications Ltd
Dyson Bell Martin
Easynet Group plc
Electrical Contractors Association
Energis Carrier Services Ltd
Energis Communications Limited
Engenica
Enterprise PLC
Environment Agency
Environmental Services Association
Esprit Telecom UK Limited
Eurobell
Farland Services UK Limited
Faultbasic Ltd
Federation of Master Builders
Federation of the Electronics Industry
Fibrenet (UK) Limited
FirstMark Carrier Services (UK) Ltd
Flag Atlantic UK Ltd
Flag Telecom Ireland Ltd
Flute Limited
Forestry Commission
Formus Communications UK Ltd
Freight Transport Association
Friends of the Earth Cymru
Gamma Telecommunications Ltd
Gas Consumer Council for Wales
General Telecommunications Ltd
Global Crossing
Global One Communications Holdings Ltd
Global Telesystems (UK) Ltd
Global Telesystems Europe BV
Ground Zereau Limited
GT UK Limited
GTS Business Services (UK) Ltd

GTS Network (Ireland) Ltd
Heritage Railways Association
Highway Authorities and Utilities Committee (England)
Highway One Corporation Limited
House Builders Federation
i-21 Ltd
Institute of Highways Incorporated Engineers
Institute of Logistics and Transport
Institute of Petroleum
Institute of Public Rights of Way Officers
Institute of Road Safety Officers
Institution of Civil Engineering Surveyors
Institution of Civil Engineers
Institution of Electrical Engineers
Institution of Gas Engineers
Institution of Highways and Transportation
Institution of Lighting Engineers
Institution of Quality Assurance
Institution of Water & Environmental Management
Interac
International Society of Arboriculture (Europe) Ltd
Internet Central Ltd
INTERNET Network Services Limited
Interoute
Ipsaris Limited
ISA UK/1
Izenkom Limited
Jason Consultants Ltd
Joint Committee on Mobility for Disabled People
Joint Committee on Mobility of Blind and Partially Sighted People
Kingston Communications (Hull) PLC
KPNQWEST Assets UK Limited
Land Access and Recreation Association
Light Rail Transit Association
Lighting Industry Federation Ltd
Louis Dreyfus Communications SA
Lux Traffic Controls Ltd
M3COM (UK) Ltd
Magnox Electric
MCI-Worldcom
Mid and West Wales Fire Brigade
Mid Wales Partnership
Motorists' Forum
National Association of Tree Officers
National Association of Waste Disposal Contractors
National Federation of Demolition Contractors
National Grid
National Joint Utilities Group

National Power Plc
National Sewerage Association
National Society for Clean Air and Environmental Protection
National Transcommunications Ltd
Neosnetworks Ltd
Networkrail
Nevada Telecom Ltd
North Wales Fire Service
Norweb Telecom Ltd
NRSWA Ltd
NRSWA WALES
NTL
NYNAS UK AB
O2 (UK) Ltd
Office of Gas and Electricity Marketing
Office of Telecommunications
Office of Water Services
Ofwat
Omne Communications Ltd
One2One
Orange Personal Communications Services Ltd
Ordnance Survey
Pacific Gateway Exchange (UK) Ltd
Pangea Global Communications Inc
Pedestrians Association
Pembrokeshire Coast National Park Authority
Pensioners' Voice
Pipeline Industries Guild
Powergen
Quadrant
Quarry Products Association
RAC Foundation for Motoring
RadioTel Systems Ltd
Ramblers Association
Redstone Network Services Ltd
Refined Bitumen Association Ltd
Retro-reflective Equipment Manufacturers Association
Rights of Way Review Committee
Road Haulage Association
Road Safety Markings Association
Road Surface Dressing Association
Rocom TBI Limited
RoSPA
Royal Association for Disability and Rehabilitation
Royal Automobile Club
Royal Society for Nature Conservation
Royal Town Planning Institute
Sand & Ballast Hauliers and Allied Trades Alliance Ltd
ScottishPower PLC
Severn Trent Water

Society of British Gas Industries
Society of British Water and Waste Water Industries
Society of Parliamentary Agents
South Wales Fire Service
South Western Electricity Plc
Southern Electric Plc
Storm Telecommunications Limited
Streetworks Consultancy Management Group
Surf Telecoms Ltd
SUSTRANS Cymru
Technical Advisors Group
Tele2 (UK) Communications Ltd
Tele2 (UK) Limited
Telecom Securior Cellular Radio
Teleglobe International
Teleport London International Ltd
Teleport UK Limited
Telewest Communications
Telia UK Ltd
Telstra (UK) Ltd
Thus PLC
TMI Telemedia International Limited
Torch Communications Limited
Traffic Control Systems Unit
Transco
Transport 2000
Transport Reform Alliance
Tree Advice Trust
Trunk Road Agents in Wales
TyCom Networks (UK) Limited
UK Highways A55 Ltd
Unisource Carrier Services (UK) Limited
United Kingdom Society for Trenchless Technology
Utilities Contractor Associations' Federation
Ventelo Business Services (UK) Ltd
Versatel Telecom BV
Viatel Global Communications Ltd
Vodafone Group Plc
Vtesse Networks Ltd
Wales Council for the Blind
Wales Council for the Deaf
Wales Disabled Drivers
Wales TUC Cymru
Waltons and Morse
Water UK
Welsh Association of Technical Officers
Welsh Consumer Council
Welsh Cycling Union
Welsh Joint Utilities Group
Welsh Local Government Association

Western Power
Winstar Communications Limited
World Online UK Ltd
WorldxChange Communications Ltd
Yorkshire Water Services Ltd Your Communications

Responses to the consultation were received from the following

Bridgend County Borough Council
Cardiff County Council
Carmarthenshire County Council
Caerphilly County Borough Council
Ceredigion County Council
City and County of Swansea.
Flintshire County Council
Gwynedd County Council
Monmouthshire County Council
Pembrokeshire County Council
Powys County Council
Vale of Glamorgan
Wrexham County Borough Council
Welsh Water
Energy Networks Association
Local Government Information House
Map Info
Network Rail

Keeping Traffic Moving: Street Work - Report on follow-up consultation

INTRODUCTION

This document sets out the results and analysis of the consultation on detailed provisions under Part 4 of the Traffic Management Act 2004 (“the 2004 Act”) (Notices and Fixed Penalty Notices) and the revision of s74 of the New Roads and Street Works Act 1991 (“the 1991 Act”) and the associated Code of Practice for Co-ordination of Street Works and Works for Road Purposes, together with the decisions taken by government.

The consultation was launched by the Department for Transport (DfT) on 12 October 2006; the deadline for comments was the 23 November 2006. Transport Wales launched a separate but similar consultation on 19 February 2007 lasting for 6 weeks.

DfT informed 550 stakeholders of the consultation launch via post and email. In total 208 responses were received, including those from some local authorities and Utilities operating in Wales.

Transport Wales received 18 responses; many were duplicates of the response sent to the English consultation. The comments raised by the organisations that responded to the Welsh consultation have been taken into consideration in the following report.

BREAKDOWN OF RESPONDENTS

	Number of responses to	
	England's consultation	Wales' consultation
Local Highway Authorities	126	
Local Highway Authorities (Wales)	9	13
Local Authority Representative Bodies	17	1
Statutory Undertakers	27	1
Statutory Undertaker Representative Bodies	10	1
Other Respondents	19	2
Total	208	18

To take the development of these policies further, DfT and Transport Wales met with three working groups comprising members of the *Highway Authorities and Utilities Committee*, a body representing highway authorities and utility companies to assist central government with the consideration of the consultation response.

The remainder of this document addresses the questions posed under the consultation, responses and decisions taken.

Q1: Are there any problems with using the simplified works categories and works definitions?

Response: There were 144 replies. 47% (68) of those who responded anticipated problems. This is made up of 50% (11) of the utilities (and 44% (4) of utility representative bodies) that responded and 45% of the authorities (and 50% (5) of representative organisations) that responded.

Definitions

Emergency and Urgent Works

A high proportion of responses from Water Utilities were concerned that the loss of 'daily whereabouts', coupled with the 3-day noticing period for minor works, would affect leak curtailment programmes and asked for water leaks to be included in 'Immediate Works'. This particularly relates to a small number of leaks that are either unknown or overlooked and have been leaking for a while and for which highway authorities challenge the use of emergency works criteria. This needs to be considered as part of wider Government policy on leak reduction, water consumption and the environment. Water leaks have the potential to undermine property, including the road structure, and many would meet the criteria for emergency works.

Welsh Assembly Government Decision: The Code of Practice text on 'early start', in paragraph 8.3.9 of the Code of Practice on Co-ordination, has been enhanced to capture those works that are not 'immediate' but need to be done sooner than 'standard' or 'minor' notice periods would allow. These works can be dealt with by cooperation, reasonableness and the use of 'early starts', but water companies are advised to contact street authorities as soon as they know action is required.

Major works

There was concern that the revised definition of major works meant that all works within an annual programme were included, even if they were of 10 days duration or less.

There was also concern that all works requiring a Temporary Traffic Order would be classified as 'Major'.

Comment: A temporary traffic order is used to close or restrict a road, eg reduce speed, and so could have significant impact on all road users and would therefore represent 'Major Works'. It is not the same as temporary traffic control.

Some respondents were concerned that works that take 11 days or more were not always 'major' in their view.

There was also concern from statutory undertakers that 10% of works would become major under these proposals, which would introduce a 2-month delay (assumed because works programmed six or more months ahead are noticed three months before works begin). While not raised directly, others were concerned at increased numbers of major works and the impact on co-ordination. One highway authority suggested 21 days as the period to define works.

Welsh Assembly Government Decision: The definition had been agreed by the Working Group and has been updated in the Code of Practice. It is the area of the highway occupied and the duration that impacts on road users and not the nature of the works carried out by undertakers, which may be straightforward, but of a longer duration.

Q2: Do you anticipate any particular problems or impacts with the new notice periods?

Response: There were 146 replies. 79% (115) of those who responded anticipate problems. This consists of 100% (23) of the utilities (and all 8 utility representative bodies) that responded and 73% (72) of the authorities (and 9 of the 10 representative organisations) that responded.

Advance notification

It was felt that advance notification would cause additional work for highway authorities especially since the code of practice did not emphasise the need for the scale of works and their location in the street to be included so further investigation would be required to ascertain this.

Welsh Assembly Government Decision: The new notice periods will remain as proposed. The proposed 6 months notice for programmed works was dropped following the 2005 consultation but the need remains for local highway authorities and statutory undertakers to share information on longer term planned works, especially major replacement programmes or resurfacing or reconstruction works.

This forward planning information, as stated in the Code, should include all information that is available, including an approximate end date, with a cross reference to any project, of which the works are part, with the details shown in the EToN Technical Specification. The Specification allows the location to be input and it is considered this is sufficient information for advance notification.

Impact on customer supply

Respondee felt that the three-month notice period for development or rolling programmes may introduce delays and costs, therefore delaying service for customers if the works were likely to take more than 10 days. In addition, telecoms providers felt that the provision of new services would be delayed from next day to four days minimum, conflicting with their long-term contractual agreements and customer charters, resulting in compensation payments. Some responses perceived less allowance for reactive works, eg leaks and new connections in the new notice periods (see earlier comments on definition of emergency and urgent works).

Welsh Assembly Government Decision: The new notice periods will remain as proposed. There is an opportunity for undertakers to request an early start, which should not unreasonably be refused. Equally, the opportunity to request an early start should not be used to rectify failure to give correct notice at the proper time.

Q3: For information on street location and infrastructure to be reliable, it needs to be up to date. How frequently should local street gazetteers be updated to ensure the information prescribed in Regulation 4(3) and 4(4) is included?

Response: There were 142 replies.

Monthly

Response: 78% (111) of those who responded thought they should be updated monthly. This consists of 43% (10) of the utilities (and 3 of the 8 utility representative bodies) that responded and 90% (88) of the authorities (and all 10 representative organisations) that responded.

It is seen as essential that all parties have up to date information, which will reduce the risk of Fixed Penalty Notices (FPNs) for out of date information and it will be easier to update more frequently. In light of this, many felt that monthly was the way to deliver this, as there were constant changes to information, with new roads, adoptions and amendments to subsequent data.

Quarterly

Response: 20% (28) of those who responded thought they should be updated quarterly. This consists of 57% (13) of the utilities (and 5 of the 8 utility representative bodies) that responded and 9% (9) of the authorities (and no representative organisations) that responded.

Some respondents favoured quarterly because they felt monthly would be too onerous and they do not have the resources to manage such frequent updates, especially as in most months there are no changes. It was also pointed out that there is no point moving to monthly updates, if the National Street Gazetteer (NSG) only allows quarterly downloads.

As and when

One highway authority indicated a preference for annual updating. However, some favoured as-and-when data changes, eg restrictions imposed, as the procedures for updating and downloading were quick and easy. It was also suggested that a web-based service allowing real-time updates to be submitted or downloaded automatically could be introduced.

As a general point, some questioned whether the Regulations or Code of Practice were the place to define the interval for updates, and whether it should be part of the requirements as associated with the NSG concession.

Welsh Assembly Government Decision: A move to monthly updates to street gazetteers is favoured, but only once 'change-only' updates are introduced by the National Street Gazetteer Concessionaire, along with the ability for all to download monthly. The long-term benefits of a web-based service can be seen. The Code of Practice will reflect the requirement of the NSG.

Q4: For local highway authorities only - What level of information do you currently include in the street works register about your authorities own works for road purposes?

Response: There were 122 replies.

Full or nearly full

19 highway authorities indicated that they currently provide all, or nearly all, the information on their own works on the street register. This included 10 responses stating that it was the same information as that required from statutory undertakers and was included on the register.

Some information, but expanding

14 highway authorities stated that they currently provide information on the register about some of their own works and indicated they were working to include all works in the future.

Some information

There were 44 responses from authorities stating that they included some information, of varying degrees, on their own works.

Limited information

21 highway authorities stated that they currently only included limited information in the street register about their own works for road purposes, but some indicated they were working to provide the same information that statutory undertakers were required to do.

None

Of the 9 authorities that responded saying that they provided no such information, 3 stated that they were working to include the same information as required of statutory undertakers.

Welsh Assembly Government Decision: It is good to note the number of authorities who retain full or near full information on their own works on their street works management and register system. Under the Street Works (Registers, Notices, Directions and Designations) Regulations 1992 (the 1992 Regulations), it is already a requirement for highway authorities to include their own works in the register although the details are not specified.

Therefore, Government expects highway authorities to include similar details for their own works as that required of statutory undertakers. It is for each highway authority to decide the best way to gather this data, either the submission of notices, as for Statutory Undertakers, or some other form of data exchange that can accommodate amendments or extensions.

This could then provide the base data for Key Performance Indicators (KPIs) to demonstrate the level playing field between works carried out by Statutory Undertakers and local authorities own works. This will support highway authorities in fulfilling their long-standing statutory duty to co-ordinate all works in the highway, as well as demonstrating compliance and delivery of the Network Management Duty

under the 2004 Act. The Working Group looking at KPIs will consider how to use this data.

Q5: What do you regard as the minimum information needed to demonstrate parity of treatment with other works promoters?

Response: There were 161 replies. 115 from highway authorities (plus 10 from representative groups) and 24 from utilities (plus 9 from representative groups).

Same or similar for all works promoters

There were 82 responses (including 42 from highway authorities and 32 from utility organisations) stating that the information needed should be the same for all works promoters as it is felt this would help improve coordination and demonstrate parity.

Limited types of works or data

In 23 responses, it was thought that the level of information should be limited to certain types of works or data. This included enough to demonstrate that highway authorities operate in line with the Code of Practice and regulations (4 responses); all works involving excavation (3 responses); all works that incur into the highway and enough to perform the Network Management Duty and demonstrate parity.

Data fields

In responding to what data should be included there were 8 responses stating that this should include start and end dates (proposed and actual), and the location, of works. A further 4 responses asked that this include a description of the works, including some asking for information on whether traffic management was used.

Welsh Assembly Government Decision: The KPI Working Group will look at using this data to form the basis for KPIs to demonstrate the level playing field between works carried out by Statutory Undertakers and local authorities' own works.

Q6: Do highway authorities agree with the proposal in the Technical Specification for EToN to require them to use the same system to provide information about their own works to the Register?

Response: There were 118 replies. 92% (109) of those who responded agreed. This is made up of 90% (9) of the utilities (and all 6 utility representative bodies) that responded and 90% (80) of the authorities (and 10 of the 11 representative organisations) that responded.

Inclusion in the Register

It was felt that the inclusion of highway authority works in the register was essential for the efficient use of information to manage the network and support parity (25 responses). However, so long as this information was in the register it did not matter how it got there (9 responses), but 4 respondents thought that it would help to ensure parity by using the same system particularly as there was no perceived benefit from using a different system. A further 5 respondents indicated their support for this proposal provided it was subject to a detailed assessment.

Welsh Assembly Government Decision: Following strong support for the proposal that highway authorities should use the EToN system to provide information about their own works in the register, the facility is provided in the Technical Specification for EToN. However, there is no power to enforce and they may use alternate means. They would need to record the same data and be able to compare proposed and actual start and end dates etc, particularly if it is to be used as basis for a KPI.

Q7: Do you anticipate any problems in moving to XML web services for transmission of EToN notices? If so, why?

Response: There were 130 replies. 39% (51) of those who responded anticipated problems. This is made up of 70% (20) of the utilities (and 7 of the 8 utility representative bodies) that responded and 24% (19) of the authorities (and 2 of the 9 representative organisations) that responded. This also included 3 of the 4 software companies that responded.

An issue for software developers

Response: There were 29 responses stating that this is an issue for software developers.

Technical specifications

The issues of data security and processing speed were raised in 15 responses. 13 responses indicated support for the XML schema but felt that the specification needed further work before it was completed, with care taken to ensure there were no different interpretations of the Technical Specification that could result in differing validation criteria and one system not 'talking' to another.

Two respondents felt that if Highway Authorities and Statutory Undertakers were not XML ready at the same time an intermediate system would be required to translate between the two.

Welsh Assembly Government Decision: The consultation draft of the Technical Specification for EToN was not the final version and work has continued to finalise this for publication with the Code of Practice; this reflects consultation responses and discussions with the working group and EToN Software Developers

The Technical Specifications are far more specific than available for v.2 or v.3 to minimise the risk of different interpretations. In addition, the provision of XML Schemas will help to ensure consistency of systems developed and interoperability.

Q8: How long will you require to prepare for the introduction of the new EToN system based on XML web service applications? This would be the period between the Regulations, and the Statutory Code of Practice being laid and the XML web service application Schema being finalised and the new Regulations coming into effect.

Response: There were 158 replies. 130 from highway authorities (plus 6 from representative groups) and 8 from utilities (plus 9 from representative groups). There were also 4 responses from software developers.

- 35 respondents stated that this issue should be discussed by the software developers or the working group. There was particular concern that they needed to be confident of supplying the software in sufficient time for training to be completed before the Regulations came into effect.
- 16 responses indicated a preference for a period of greater than 12 months, with suggestions varying from 12 to 24 months.
- 45 respondents suggested a period between 9 and 12 months.
- 43 respondents suggested a period between 6 and 9 months.
- 6 respondents suggested a period up to 6 months.

The opinion of the software developers was that there should be a minimum 6-month period following the completion of the Technical Specification. However, one developer stated that organisations might have to be given the option of choosing a date, as the key problems will be new business practices and the co-ordination of availability of new processes between organisations.

Welsh Assembly Government Decision: The software development group will have had 9 months to finalise the design of the XML Schema and associated applications following publication of similar Regulations in England in July 2007. These Regulations, which in essence are the same as those published in England, are programmed to come into force in April / May 2008 to coincide with the English regulations.

Q9: Do you see any need or benefit for Ministers to prescribe a period within which the restriction following substantial street works lapses, if those street works are not complete?

Response: There were 138 replies. 42% (58) of those who responded see a need or benefit. This is made up of 65% (15) of the utilities (and all 7 of the utility representative bodies) that responded and 32% (30) of the authorities (and 2 of the 10 representative organisations) that responded.

No benefit or need

There were a number of reasons why certain respondents saw no benefit or need for prescribing such a period. One concern was that the existing Section 58 (1991 Act) restrictions were already onerous and the current exemptions meant they were not effective and works might be classed as urgent or left at an interim stage to prevent restriction designation. It was felt that it should therefore be left to the discretion of the highway authorities, which should be acting reasonably.

There was also concern that it might be difficult to judge when works would be complete and it was noted that if a period were prescribed then there could be an incentive for street works to be completed slowly so that the direction to impose a restriction lapsed. It was noted that if a period was not prescribed a Highway Authority could still revoke a restriction.

There were 22 responses stating that if works were not complete then there should be no restrictions.

Period

There were 7 responses suggesting that if a period was to be prescribed it should be between 3 and 6 months with a further 5 suggesting the period should mirror the exact time for substantial road works in order to create parity. 12 responses suggested a period of 15 days in line with the Major Works validity period.

Welsh Assembly Government Decision: As a result of Working Group discussion and inconclusive consultation responses no period has been prescribed.

Parity is not possible as the restriction for road works lapses if the road works are not substantially begun within one month of the date specified in the restriction notice (which must be three months after the notice is published). While a direction under s58A can only lapse if the works to which it relates are not completed within that prescribed period. This risks creating an incentive to leave works incomplete to avoid restrictions being imposed. The Code of Practice makes it clear that a s58A restriction (following substantial street works) can be revoked by a Highway Authority.

Q10: Should the definition of substantial street works be changed to exclude major works of 10 days duration or less?

Response: There were 138 replies. 33% (46) of those who responded say it should be changed. This is made up of 78% (18) of the utilities (and 6 of the 8 utility representative bodies) that responded and 32% (30) of the authorities (and 1 of the 11 representative organisations) that responded.

For

There were 5 responses commenting that excluding major works with less than 10 days duration would reduce the burden on both Statutory Undertakers and Highway Authorities. Particularly, as mentioned in 2 further responses, if more works were restricted there may be Statutory Undertakers queuing to carry out works when a restriction is lifted, with an adverse impact on residents. 12 responses suggested a period of 15 days in line with the Major Works validity period.

Against

It was highlighted in 12 responses that major maintenance, such as large resurfacing schemes, might take less than 10 days, but should still be classed as substantial road works and their exclusion from s58 restrictions would not be beneficial. Further responses stated that the nature and scale of the work should be the deciding factor and that this definition should not just be aligned with works categories or duration, particularly as shorter works can be equally as disruptive as longer ones.

In addition there were a number of responses (12) suggesting that if the only factor that makes short duration works 'major' was the use of traffic orders then they should not count as substantial street works.

5 respondents felt that the current definition should remain, as it is a simple, clear rule that means substantial equates to major works. 7 respondents felt that the

definition for substantial street works should be the same as for substantial road works.

Welsh Assembly Government Decision: The definition of substantial works will remain as proposed and include major works that require a Traffic Regulation Order or form part of a statutory undertaker's programme even if the duration is less than 10 days.

Q11(a): Would you wish local authorities to continue to publish in local newspapers its intention to restrict street works following either substantial road works or street works and what benefits does this bring?

Response: There were 137 replies. 74% (101) of those who responded say that local authorities should not continue to publish this information in local newspapers. This is made up of 28% (5) of the utilities (and 50% of the 3 utility representative bodies) that responded and 88% (87) of the authorities (and 6 of the 8 representative organisations) that responded. Only 1 of the 6 other organisations that responded said this should not continue.

Q11(b): Should similar provisions be retained for the designation of a street as protected?

Response: There were 134 replies. 77% (103) of those who responded say that local authorities should not continue to publish this information in local newspapers. This is made up of 33% (6) of the utilities (and 50% of the 6 utility representative bodies) that responded and 88% (83) of the authorities (and 9 of the 10 representative organisations) that responded. Only 2 of the 6 other organisations that responded said that it should not be retained.

For

The arguments for retaining the requirement of publishing restrictions in local newspapers included:

- It satisfied the public interest and helped transparency (11 responses).
- Not everyone had access to the internet and there was a need to inform local residents (6 responses).

However, these arguments came with caveats such as the use of two local papers was costly and there should be greater use of websites to inform the public.

Against

The arguments against retaining the requirement of publishing restrictions in local newspapers include:

- it was too costly and unnecessary, especially if the data was published on websites, as there were marginal benefits. (20 responses).
- few people read local newspapers and there would be a lack of interest in the information.

- it was not necessary, as all those with an interest would have received a copy of the notice.

Alternatives proposed were greater use of the internet (which would attract wider attention), notices in the streets in question and targeted leafleting.

Welsh Assembly Government Decision: The requirement, in regulations, to publish in newspapers has been amended to publishing on the Highway Authority's website. However, the Code of Practice (in section 5.5) says that Highway Authorities may wish to publish in local newspapers and emphasises the need to have a copy of the notice sent to interested parties and the information entered promptly in the Register and NSG. The publishing of notices on a website is no substitute for sending notices to undertakers or other bodies or timely updating of the Street Works Register.

Q12: Do the criteria for traffic sensitive streets allow those streets, where works will have the greatest impact on the road network in the immediate vicinity, to be designated as traffic sensitive?

Response: There were 136 replies. 58% (79) of those who responded agree that they do. This is made up of 29% (6) of the utilities (and 3 of the 7 utility representative bodies) that responded and 65% (60) of the authorities (and 6 of the 11 representative organisations) that responded.

Why criteria are inadequate

There were 30 responses stating that the criteria were over-prescriptive or restrictive and that there was no evidence to support a change from existing criteria.

Other responses considered the criteria arbitrary and allowed broad scale restrictions to be put in place, where the impact of street works was minimal. It was also noted that under the new criteria the number of Traffic Sensitive streets could increase significantly, which could increase potential s74 charges (8 responses).

A number of respondents stated that there should be additional criteria. These included:

- areas outside schools during term time in morning and afternoon (30 responses);
- abnormal load and hazardous routes, especially in rural areas, (19 responses);
- routes of emergency vehicles to and from hospitals, police, ambulance or fire stations (11 responses).

Welsh Assembly Government Decision: The criteria, as currently drafted, are based on long discussions and are not vague, either a road qualifies or it does not. However, wording has been added to the Code of Practice (section 5.7) that recognises a Street Authority can include other information on potential hotspots, such as schools or special events, in Additional Street Data which is part of the street gazetteer (held on the NSG Concessionaire's website).

Traffic Sensitive Designation

The Regulations say that traffic sensitive designation applies only when the criteria apply. 10 respondents were concerned that this meant if the traffic below criteria level for an odd hour at odd times the traffic sensitive designation no longer applied.

Welsh Assembly Government Decision: The Code of Practice has been clarified to make it clear that the criteria are used to decide whether Traffic Sensitive designation is merited and that, once a designation is made, then the street is Traffic Sensitive at all times unless the status is restricted to specific times of day or days of the week or dates.

There was concern from some statutory undertakers that justification was not always provided when a highway authority designated a street as traffic sensitive.

Welsh Assembly Government Decision: The Code of Practice now advises (in section 5.5) that when consulting on a Traffic Sensitive designation the rationale should be included.

Q13: Would you wish to see the provision to designate a road as traffic sensitive by agreement of the majority of statutory undertakers with apparatus in a street to be reinstated in the draft Regulations?

Response: There were 138 replies. 41% (57) of those who responded agree that they do. This is made up of 91% (20) of the utilities (and all 8 of the utility representative bodies) that responded and 24% (22) of the authorities (and 2 of the 11 representative organisations) that responded.

For

15 respondents felt that this ability was essential for streets, which should be designated as traffic sensitive but where the criteria was not met. It was also felt that this was a more democratic method of designation that took into account greater knowledge, allowed for objective discussions and was a process that had worked for 15 years (18 responses).

In addition, there were responses asking for such an agreement to be required for all designations, as this would prevent designation where there was no clear need.

Against

22 respondents commented that if Statutory Undertakers had the power of veto then the Highway Authorities would not be able to apply their Network Management Duty. This view was compounded by the fact that 4 respondents felt that if this provision were included then Statutory Undertakers would always veto designation to avoid higher s74 charges and reduce the need for better planning of works.

In 15 responses, it was commented that only Highway Authorities had the knowledge required to decide on designation and therefore such a provision had no benefits.

Welsh Assembly Government Decision: The provision to designate a road as traffic sensitive by agreement, when none of the criteria are met, has been included in the Regulations and Code of Practice.

Q14: Which other bodies, if any, should be consulted on proposed designations of streets as protected, with special engineering difficulties or as traffic sensitive?

Response: There were 116 replies. 37% (59) of those who responded said no other bodies should be consulted. This is made up of 30% (7) of the utilities (plus 8 out of 9 utility representative bodies) that responded and 34% (37) of the authorities (plus 3 of the 12 representative bodies) that responded.

Other bodies to consult

The greatest number of suggestions was for including adjoining highway authorities, especially if proposed designations were close to, or crossed, boundaries (35 responses).

There were other suggestions that included -

- The Trunk Road Authority ie Highways Agency or Transport Wales (17 responses);
- Planning Authorities, so they can comment on development plans (9 responses);
- Network Rail;
- Emergency Services;
- Olympic Delivery Authority (for the Olympic Route Network);
- Local disabled groups, 'The Freight Transport Association', and other miscellaneous interest groups.

Among those who said no other groups should be consulted there were respondents who felt that the current list was already too long and Transport for London and the Highways Agency do not need to be consulted each time.

Welsh Assembly Government Decision: It has been agreed that no additional bodies will be added to the list of those who will be consulted, but the Code of Practice has been amended (section 5.5) to say that the list is not definitive and it may be sensible to consult others.

Fixed Penalty Notices (FPN)

Q15: Do you have any new concerns about the introduction and application of Fixed Penalty Notices (FPN) for offences under the 1991 Act?

Response: There were 162 replies. 84% (136) of those who responded had concerns. This is made up of 96% (26) of the utilities (and all 8 utility representative bodies) that responded and 81% of the authorities (and 9 of the 10 representative organisations) that responded.

FPN Offences

There were several comments (17) on the fact that there was no parity as neither FPNs nor proxies were given for Highway Authorities' own works.

Welsh Assembly Government Decision: Fixed Penalty Notices are for offences under the 1991 Act, especially noticing offences, and cannot be applied to highway authority works. However, the Network Management Duty will oblige local traffic authorities to do all that is reasonably practical to manage the road network and keep traffic moving. The "*Guidance on Intervention Criteria*" highlights parity as an important feature common to all authorities albeit to different degrees. Authorities must lead by example, applying the same standards and approaches to their own activities as to those of others. They should ensure that the principles that they use to manage utilities' street works also apply to the management of their own works.

Alongside the 24 responses asking for further guidance on what constitutes an offence, a number questioned whether inaccurate information in a notice might trigger a FPN. The Highway Authorities feel that there needs to be clear guidance on what may be an offence, especially in relation to s54. This is balanced by a concern of Statutory Undertakers at the lack of a restriction on the use of FPNs for administrative or minor errors that have no impact on traffic disruption, which they feel could be used to generate income, and they are requesting a safeguard against what may be perceived as the excessive use of such FPNs.

Welsh Assembly Government Decision: The Code of Practice clarifies that, with the exception of s55(9), the listed 1991 Act offences remain unchanged. The introduction of FPNs is an alternative to taking action through the Magistrates' Court, but evidence is required whichever way an offence is dealt with. It is inappropriate, for the DfT or Transport Wales to set out what is or is not an offence or the circumstances in which a FPN may be challenged. Whether a particular case justifies giving a FPN or prosecution in the Magistrates' court would be a matter for each authority to decide based on the facts of the case and their own independent legal advice.

Clarification was requested about how many FPNs may apply to each notice.

Welsh Assembly Government Decision: The Code of Practice clarifies that no more than one FPN may be given for each notice. Those giving FPNs need to look at the nature of each offence, and decide what action to take based on their own legal advice. More than one FPN may be given for one set of works because there are a number of different notices required for each set of works. Under s54(5), an offence may be committed by a failure to comply with statutory duties, even if the notice was correct.

A number of comments were received stating that EToN Systems will need to meet minimum standards to avoid FPNs being given for system incompatibility errors.

Welsh Assembly Government Decision: The Regulations will come into force six weeks later than the Noticing Regulations to allow the new system to bed down and eliminate offences because of the incapability of systems.

Error Correction

Although not a specific question, a number of respondents raised error correction. If a FPN is given for inaccurate information then there is no requirement for the inaccurate information to be corrected and this undermines the data integrity of the Register. It was also felt that the data correction option might undermine the use of FPNs and that error correction might not be used if it would trigger a FPN. 27 responses mentioned one or all of the above.

Welsh Assembly Government Decision: The Regulations and Code of Practice are intended to provide information that enables highway authorities to comply with the duty to co-ordinate. The facility to make error corrections is intended to help ensure the register is correct and that there is sufficient information to carry out coordination. Hence, the Code of Practice states that error correction is to be made with the agreement of the Highway Authority. The EToN Technical Specification is being developed to send Error Correction Notices only once the sender has confirmed that the street authority has been notified. A notice to correct an error will be clearly identified as error correction by a field, and the corrected data will automatically be included on all subsequent notices for the same set of works, by the Statutory Undertaker and Highway Authority EToN System (unless rejected). FPNs are to provide an incentive to improve the standards of notices so that accurate and timely information is provided to allow effective co-ordination. It is not for DfT or Transport Wales to issue guidance on how a street authority should exercise its discretion in issuing FPNs, or how undertakers should exercise their right of representation. However, authorities will no doubt wish to consider the possible consequences of not exercising their discretion as to whether or not to issue a FPN.

Concern was raised that street authorities cannot be proactive in managing any failures under section 55 as the Regulations appear to say that a FPN for a s55 offence cannot be given until the works have started.

Welsh Assembly Government Decision: Section 55(5) of the 1991 Act states that 'an undertaker who begins to execute works in contravention of this section (55) commits an offence...' Therefore an undertaker has to have started work before there is an offence, which is beginning to execute works in contravention of s55 based on no notice being given as required by s55(1).

Penalty Levels

It was suggested that the proposed level of penalty was too low, with worked examples given as supplementary evidence in one response. This was to highlight what the respondent believed was a disparity between the cost, to a highway authority, of a noticing offence and the proportion recovered by a FPN.

Welsh Assembly Government Decision: The penalty levels will remain as consulted on. The 2004 Act set these offences at level 4 and set a maximum fixed penalty amount of 30% of the maximum fine for each offence - £750 in the case of level 4 offences. However, in 2004, when consulted, the Home Office compared the fixed penalty amounts for other level 4 offences and suggested an amount of £120 with a discounted amount of £80. The penalty amounts recommended are in line with those that apply to the higher tier disorder offences, which are subject to equivalent maximum penalties. However, there will be a commitment to review the

penalty levels 12-18 months after they come into force to ensure that the FPN regime is effective.

A sliding scale of fixed penalties that would reflect the level of disruption caused by an offence was suggested in 20 responses.

Welsh Assembly Government Decision: A sliding scale will not be implemented as there is disruption whenever works take place and it would be hard to judge how much disruption there may have been had coordination or mitigating measures been applied. This would lead to disputes about both the level of disruption and whether or not it was avoidable.

FPN Giving and Payment

It was requested that FPNs be given as they occur and not in bulk. It was also highlighted that batch payment would make it difficult to know when payments had been made for each FPN.

Welsh Assembly Government Decision: It is up to the street authority involved to decide how they wish to give FPNs and accept payment for them. However, while several FPNs may be given at the same time, there must be a separate notice for each offence and if batch payments are used, undertakers must provide a list of references to allow FPNs and payments to be reconciled.

There were requests for the FPN notice to cite business groups, or services, rather than a named or authorised person in representations.

Welsh Assembly Government Decision: The new Schedule 4B to the 1991 Act says that a FPN must state the person to whom, and address at which, any representation relating to the notice may be addressed. The form will remain as it was in the consultation, but the overlay on the Form of Fixed Penalty Notice regarding "Named Authorised Officer" in Appendix H, Table H2 of the Code of Practice has been amended to clarify that this may be an organisation and not necessarily a specific individual.

It was suggested, in 6 responses, that FPNs be decriminalised so that the debt recovery process could be used and not court action, particularly as there was concern that Highway Authorities would have to commit additional resources to manage FPNs.

Welsh Assembly Government Decision: Decriminalisation of FPNs would require a change to the primary legislation.

Representations

There were a number of comments (19) stating the appeals process was not clear or could be used to introduce a delay so that action for the original offence ~~is~~ was too late. A suggestion was made, in 7 responses, that there should be a 10 day limit on appeals against FPNs, after which a FPN was deemed to be accepted, in order to make the process clearer. There was a section in the Code of Practice on 'Representation' but with no specific period given and no reference in the Regulations.

Welsh Assembly Government Decision: There is no power in the 2004 Act to set a period for non-acceptance of a FPN in regulations, therefore only a strong recommendation can be provided. The current recommendation will not be made any clearer by inserting an appropriate recommended period because if this period turns out to be impracticable then nothing can turn on the fact that representation was not made within it.

Time Period

It was commented that the 91-day period in which to give a FPN was too long, particularly given that the discount period would be 29 days. This discount period was seen as too short given that companies generally had a payment process of 30 days and this might lead to invoicing problems. There was also concern that by having a discounted rate, disputes might arise about the payment date and encourage early payment followed by representations.

Welsh Assembly Government Decision: There will be no change to either period. The 91-day period in regulations corresponds with the typical three-month inspection cycle common amongst street authorities and remains unchanged since the original consultation in 2005. The proposed discount period of 29 days has already been modified from the 15 days mentioned in the 2004 Act and discussed by the working group and remains consistent with the period consulted on in 2005.

Q16: Should Regulations for fixed penalty notices come into effect at the same time as those for Noticing and s74 charges?

Response: There were 133 replies.

All three regulations to come in at the same time

Response: 61% of those who responded, with 80% of the 87 highway authorities (and 90% of the 10 representative bodies), but none of the utilities or their representative bodies, agreed with this.

For

There were 18 comments that Notices, FPNs and s74 regulations should be introduced at the same time. An additional 12 comments stated that without the FPN Regulations there would be no incentive for Statutory Undertakers to improve the quality of notices. One response said that training would be easier to manage if all regulations were introduced at the same time.

It was also felt that the FPN Regulations were overdue and there should be no further delay, with some respondents feeling that they should come into force before new Noticing regulations (9 responses), as they were required in order to support the Network Management Duty (13 responses).

Against

There may be bedding-in problems for the new Regulations, Code of Practice and EToN system that could cause difficulties to the operation of the system and reduce its effectiveness from the start, possibly bringing the system into disrepute.

FPN Regulations to come into force after Noticing and Section 74 Regulations

Response: All 21 utilities (plus 8 representative bodies) that responded, and 20% of the authorities (plus 1 representative body) that responded, agreed with this.

For

A number of responses (33) suggested that phased introduction would help with settling in new systems given that introductory problems were likely and allow the employment or retraining of staff to spread over a longer period. A bedding-in period, of varying lengths, was suggested in 27 responses. The lengths suggested ranged from 1 to 24 months, with 6 to 12 months being the most common.

Against

There were 25 responses that argued against phased introduction, as they believed it would reduce FPN effectiveness, create uncertainty, increase costs or lessen the impact of the performance improvement. One response argued that there had already been ample time for works promoters to prepare. Certain Highway Authorities added that there would need to be discussion on reasonableness when applying FPNs initially, if all regulations came in together.

Welsh Assembly Government Decision: It has been decided following consultation responses and working group discussion that FPNs will come into force 6 weeks after the Noticing Regulations come into force to allow bedding-in problems to be resolved without the threat of FPNs. The s74 Regulations, following proposals coming from the consultation and working group, will be the subject of another consultation to consider alternatives.

Charges for unnecessarily prolonged occupation of the highway (s74)

Q17: What are your views on these proposed levels of charges for all except off-carriageway works on non-Traffic Sensitive (TS) Category 3 and 4 streets? What impact will they have?

	Road Category 0 & 1	Road Category 2	Road Category 3 and 4 (TS)	Road Category 3 and 4 (not TS)	Off Carriageway (TS)
Major works and Standard works	£2,500	£2,000	£750	£250	£250
Minor works and Immediate works	£500	£500	£250	£100	£100

Excluding off-carriageway works on Category 3 and 4 streets from s74 charging regime

Some 58 local highway authorities responded on this issue, arguing that excluding s74 charges from off-carriageway works would mean that:

- statutory undertakers would not complete works on time, or would use the footpath or verge for the storage of plant or equipment for works nearby, which would require authorities to do more monitoring and take remedial action;
- undertakers might not provide walkways in the carriageway, if that would bring the works within the coverage of s74 charges with a potential impact on safety;
- the impact would be disproportionate on pedestrians, especially those with mobility problems, especially if the street was on a route to school;
- it undermines the network management duty;
- it may conflict with the duties on local authorities imposed by the Disability Discrimination Act 2005⁹ ;

Two utility companies pointed out that the definition of off-carriageway was unlikely to exclude many works, as the majority would require vehicles or plant that would be based in the carriageway.

Statutory undertakers did not comment on the principle of excluding off-carriageway works on non-TS category 3 and 4 streets. Their comments focused on the level of charges, which those undertakers that commented, considered were adequate at the existing levels to influence behaviour.

Definition of off-carriageway

There were concerns from 25 respondents that the definition of 'off-carriageway' needed to be clearer, especially about whether works counted as off-carriageway if works vehicles encroached on the carriageway or provision for pedestrians occupied part of the carriageway. It was felt that the principle of "off-carriageway works" would cause confusion.

Welsh Assembly Government Decision: After analysis of consultation responses and Working Group discussion, the proposed separation of "off-carriageway works", including the exclusion of overrun charging for such works on non traffic-sensitive streets, has been removed from regulations.

Level of charges

There were 46 responses that indicated those making them were content with the charging structure proposed above, with five considering the proposed charges more reasonable than those proposed in 2005. It was suggested that the level of s74 charges should be reviewed annually (13 respondents). However, there were a number of responses that considered the proposed s74 charges too low to provide a deterrent (8 responses), while others considered only certain aspects of the charges too low (charges for off-carriageway too low - 4 responses; charges for non-TS

⁹ Since December 2006, it has been unlawful for a public authority to discriminate against a disabled person in carrying out its functions and public bodies may be required to make reasonable adjustments to their plans, policies and procedures to ensure the needs of disabled people are considered.

Category 3 and 4 too low - 6 responses). These comments were balanced by 11 respondents who considered the current level of charges to be sufficient and that they should only increase with inflation. There were 8 responses that considered the level of charges had been increased without considering the impact of overruns on those streets on congestion.

It was also noted in response to this question and question 24 that with the new definitions of works, there would be a larger number of works classed as major and so attracting the highest rate of s74 charges. Several utility companies (8 responses) noted that the changes to s74 charges would lead to higher costs that would be passed on to utility customers.

Welsh Assembly Government Decision: It has been agreed to proceed with this version of charges, with the omission of the off-carriageway provision, as set out below. However, there will be a further consultation on these Regulations regarding a new proposal as set out later in this document.

	Road Category 0 & 1	Road Category 2	Road Category 3 and 4 (TS)	Road Category 3 and 4 (not TS)
Major works and Standard works	£2,500	£2,000	£750	£250
Minor works and Immediate works	£500	£500	£250	£100

Q18: What are your views on a s74 charging regime where the rates for overruns are significantly higher, but do not apply to those works on category 3 or 4 streets that are not traffic sensitive? What ways are there to ensure prompt completion of works on such streets without the ability to apply s74 charges?

Type of works	Road Category 0 & 1	Road Category 2	Road Category 3 & 4 (traffic sensitive)	Road Category 3 & 4 (non-traffic sensitive)
Major works	£5,000	£3,000	£1,000	No charge
Standard works	£3,000	£1,000	£500	No charge
Immediate works	£1,000	£1,000	£250	No charge
Minor works*	£1,000	£1,000	£250	No charge

* The definition for categories of works has changed from that proposed in the 2005 consultation, as the concept of incursion into the highway for the categorisation of works has been dropped. As a result works that under the 2005 proposals would have been standard works would, under current proposals, be minor works as they have a duration of 3 days or less.

Local highway authorities (99 respondents) overwhelmingly responded opposing the exclusion of non-TS Category 3 and 4 streets, and many specifically raised this issue in the covering letters to the consultation response. Their concerns were:

- that it would undermine their ability to deliver the Network Management Duty on non-TS Category 3 and 4 streets, as without s74 charges, statutory undertakers, mainly utility companies, would not complete works where there were no s74 charges, as resources would be diverted to works on higher category streets and so create a two-tier system;
- that there would be a disproportionate impact on pedestrians and on vulnerable road users and so may conflict with the Disability Discrimination Act;
- the impact on 'liveability' with works left open longer attracting litter or vandalism and with increased complaints;
- remedial action to make sites safe, along with the cost of pursuing court cases under s66 (avoidance of unnecessarily delay or obstruction) of the 1991 Act, to recover the costs, would add to burden on local authority resources.

Local highway authorities (53 responses) stated that the use of alternative sections within the 1991 Act¹⁰ to control works would be less effective than s74 charges, as they would require costly and retrospective prosecution that might not lead to penalties imposed by a Magistrates' Court being commensurate with the costs incurred by the authority or sufficient to influence utility companies' behaviour.

The statutory undertakers (21) supported a greater focus on busier streets and the exclusion of non-TS Category 3 and 4 streets. The counter-arguments are that:

- although 75-80% of the local authority street network is non-TS Category 3 and 4 streets, the majority have limited significance for network management;
- utilities will focus resources on those works in streets where charges apply, which should result in more works on busier roads being completed on time with a large reduction in the overall level of s74 charges made;
- it is costly to have extended durations for works or to leave equipment on site longer than necessary and that contractors have arrangements in place to clear sites promptly (24 responses);
- highway authorities have alternative tools, such as s66 of the 1991 Act, to tackle any problems with extended durations.

¹⁰ Other sections of the 1991 Act that allow highway authorities to take action against statutory undertakers (SU) include s66 - avoidance of unnecessary delay or obstruction (summary offence level 5); s59 - duty of street authority to co-ordinate; s60 - duty of SUs to co-operate (summary offence level 5); or s56 - failure to comply with direction as to timing of works - (summary offence Level 5).

Local highway authorities may argue that if there are already internal financial incentives for utilities, and their contractors, to complete works and clear the site promptly, then there would be minimal levels of s74 charges made and its use would not be an issue.

A corollary of excluding certain categories of work must be higher charges for overruns on those streets where there are still s74 charges. Those proposed were £5,000 a day for the very busiest streets, if major works overrun. However, the majority of undertakers challenged the high level of s74 charges and argued that such rates were unnecessary to influence behaviour.

Welsh Assembly Government Decision: It has been agreed not to proceed with these proposed charges.

Proposed alternative

In response to the utilities' concerns that certain s74 charges, especially those applied to minimal equipment and spoil left on site, are disproportionate, a alternative proposal was discussed by the Section 74 Working Group.

This involves a street authority notifying a statutory undertaker of the equipment/spoil, saying that they will be charged a token penalty (perhaps £50), and that they have until the end of the next working day to remove it before Section 74 charges apply. If the Section 74 charges were applied, they would be backdated to the date the works were notified as closed (or clear) until the equipment or spoil is removed.

This would formalise an informal method of dealing with this issue in England where certain highway authorities, as permitted by the English 2001 Regulation 5(8), opts to reduce or waive the charge. Where the works are not closed and the site is open with reinstatement (interim or permanent) incomplete, the prescribed s74 charges would be applicable. Section 74 regulations have not been introduced in Wales at this time, but new regulations are proposed for Wales and subject to the approval of the National Assembly for Wales, will become operative in 2008.

There was working group agreement that this proposal would address several concerns raised in consultation responses. It was advised that there might be KPIs for street authorities to ensure there would be parity on this issue.

Welsh Assembly Government Decision: Following discussion with lawyers and other government departments, this proposal has been included in regulations, but will require further consultation. It is envisaged that despite this consultation the Regulations will be ready to come into force at the same time as those for notices.

Q19: How will this (prescribed period of two days) work in practice? Will there be any impacts on standards of quality and safety?

Prescribed period

A number of respondents (21) were concerned that the reduction in the prescribed period would lead to a reduction in quality or safety due to the pressure to complete works in a shorter time, although 16 respondents thought there would be no impact on safety or quality. Certain respondents (five) believed a shorter prescribed period would mean undertakers, or their contractors, would be reluctant to use recycled materials. It was also thought, by 7 respondents, that the shorter prescribed period would increase the administrative burden on both local authorities and undertakers, as they have to submit and check the proposed durations of works.

Statutory undertakers (5 respondents) were also concerned that certain highway authorities would challenge all works back to two days, rather than agree with the undertaker a reasonable period for the work to be completed. They were concerned that the noticing system would become unworkable and lead to more interim reinstatement, with subsequent permanent reinstatements, as well as increase the number of s74 charges being made, or compromise work quality. There were requests from statutory undertakers to base the period on factual evidence and not 'the ideal world'.

Welsh Assembly Government Decision: The Code of Practice clarifies the purpose of the prescribed period and advises against the unreasonable reduction in duration. The "prescribed period" is not a target against which to judge works durations, but is intended to minimise the period when nothing is happening on-site.

Q20: Should the technical specification for EToN become a stand-alone volume?

Response: There were 160 replies. 98% (156) of those who responded said yes. This is made up of 100% (25) of the utilities (plus all 8 utility representative bodies) that responded and 97% (104) of the authorities (plus all 11 representative bodies) that responded.

For

Those respondents that believe it should be a stand-alone say that this would make it easier to use and update. They also believe it is beneficial to separate the technical information from the policy.

Against

Those that think it should not be stand-alone say that it would make cross-referencing more difficult and increase cost.

Welsh Assembly Government Decision: It has been agreed to have the Technical Specification for EToN as a stand-alone volume, which will include provisions from the Noticing and Permits Code of Practice. Any future amendments to the Codes of Practice that utilise the EToN system may/will require revisions to the EToN Technical Specification.

Q21: Are you content with the proposals on handling notice cancellation and error correction?

Response: There were 148 replies. 41% (61) of those who responded said yes. This is made up of 16% (4) of the utilities (with no utility representative bodies) that responded and 52% (51) of the authorities (plus 5 of the 10 representative bodies) that responded.

Notice Cancellation

There were requests for clarification on what was meant by cancellation, which covers works not now taking place or those that have been reprogrammed. There were requests for a Fixed Penalty Notice to be issued if a notice was not cancelled.

Welsh Assembly Government Decision: The definition and purpose of notice cancellation has been clarified in the Code of Practice. Section 54(4A), in the context of the Technical Specification for EToN, requires that an undertaker who gave a s54 notice but is no longer planning to start works gives a cancellation notice within a prescribed period. Any non-statutory cancellation outside of this period does not remove the need for the notice under s54(4A). If this is not carried out then under s54(5) it is an offence, which may be subject to a Fixed Penalty Notice.

Error Correction

A number of respondents were concerned that if a FPN was given for inaccurate information then there was no requirement for the inaccurate information to be corrected and that this would undermine the data integrity of the Register. It was also felt that the data correction option might undermine the use of FPNs and that error correction may not be used if it would trigger an FPN. 27 responses mentioned one or all of the above.

Welsh Assembly Government Decision: The Code of Practice is intended to provide information that enables highway authorities to comply with the duty to co-ordinate. The facility to make error corrections is intended to help ensure the register is correct and that there is sufficient information to carry out coordination. Hence, the Code of Practice states that error correction is to be made with the agreement of the Highway Authority. The EToN Technical Specification is being developed to send Error Correction Notices only once the sender has confirmed that the street authority has been notified. A notice to correct an error will be clearly identified as error correction by a field, and the corrected data will automatically be included on all subsequent notices for the same set of works, by the Statutory Undertaker and Highway Authority EToN System (unless rejected). FPNs are to provide an incentive to improve the standards of notices so that accurate and timely information is provided to allow effective co-ordination. It is not for DfT or Transport Wales to issue guidance on how a street authority should exercise its discretion in issuing FPNs, or how undertakers should exercise their right of representation. However, authorities will no doubt wish to consider the possible consequences of not exercising their discretion as to whether or not to issue a FPN.

Q22: Do you have any comment on the analysis of the costs and benefits in the Regulatory Impact Assessment (RIA) for Noticing, Directions and Designations Regulation? Please provide information on the estimated costs or savings of the proposed changes and underlying assumptions where possible. Are there any additional costs that need to be considered?

Response: 134 respondents had comments. This includes 27 utilities (plus 9 utility representative bodies) and 83 authorities (plus 10 representative bodies).

The comments on the RIA reflected concern that not all costs had been accounted for and that the full estimated benefit was unlikely to be achieved. Costs that respondents felt had not been accounted for included those for additional staff, training and IT. However, there were limited responses that provided estimates of these costs.

Welsh Assembly Government Decision: The RIA has been considerably revised following responses to the consultation and further work by the DfT on the potential costs and benefits.

Q23: Do you have any comment on the analysis of the costs and benefits in the RIA for fixed penalty charges? Please provide additional information on the estimated costs or savings of the proposed changes and underlying assumptions, if possible separating administrative costs from the charges paid following a FPN. Are there any additional costs that need to be considered?

Response: 130 respondents had comments. This includes 27 utilities (plus 9 utility representative bodies) and 81 authorities (plus 9 representative bodies). The responses to this question echoed those to question 22.

In addition, there were certain comments that said the National Joint Utilities Group estimates of the number of FPNs to be given were overly pessimistic and others that said the Halcrow estimates were overly optimistic.

Welsh Assembly Government Decision: As with that for the Noticing RIA, this RIA has been considerably revised following responses to the consultation and further work by the DfT on the potential costs and benefits.

Q24: Do you have any comment on the analysis of the costs and benefits in the RIA for charges for unreasonably prolonged occupation of the highway (s74 charges)? Please provide additional information on the estimated costs and underlying assumptions if possible separating administrative costs from the potential charges that may be levied. Are there any additional costs that need to be considered?

Response: 129 respondents had comments. This includes 30 utilities (plus 9 utility representative bodies) and 77 authorities (plus 9 representative bodies). The responses to this question echoed those to question 22.

Welsh Assembly Government Decision: This RIA will be revised in light of the changes that are being proposed to the regulations and the consultation responses. It will be included in any further consultation on the regulations.

Q25: Do you agree that in principle works which have begun or were noticed under the existing regulations should continue to follow the requirements of the existing regulations?

Response: There were 136 replies. 100% of those who responded said they agree. This includes 23 utilities (plus 7 utility representative bodies) and 97 authorities (plus 9 representative bodies).

General transitional arrangement principles

There were responses that, although in agreement with the principle, said that it was important to ensure that notices served under the existing regulations did not continue indefinitely.

There were additional comments saying that the introduction of FPNs and new Charges for Unreasonably Prolonged Occupation of the Highway needed to be applied consistently, with importance placed on minimising conflicts with the noticing procedures.

In general, it was seen as important to have clear and simple rules for transition, with 1 respondent asking for a stand-alone volume instead of wording included in the Code of Practice.

Welsh Assembly Government Decision: These principles have been retained as the basis for transition. The transitional arrangements have been included as part of the Commencement Order and Noticing Regulations and as such are statutory.

Q26: Do you anticipate any problems with the practical application of the detailed protocol set out in section 13.7 of the Code of Practice?

Response: There were 131 replies. 50% (65) of those who responded said they anticipate problems. This is made up of 87% (20) of the utilities (plus all 7 utility

representative bodies) that responded and 36% (30) of the authorities (plus 3 of the 8 representative bodies) that responded.

Transitional arrangement problems

The main issue was that respondents (20) believe IT developers must have a consistent understanding of regulations to ensure that software packages work together and there were no system incompatibilities or protocol problems. This links to the main suggestion in the responses (16) that there should be a bedding-in or trial period to ensure that the new EToN systems work.

There was concern that there needed to be further consideration of the impact that the introduction of three sets of regulations, a code of practice and a technical specification will have, in particular, on training; and the possibility that FPNs may be issued when not all parties have had sufficient time to become accustomed to new requirements.

Welsh Assembly Government Decision: The Technical Specifications are far more specific than available for v.2 or v.3 to minimise the risk of different interpretations. In addition, the provision of XML Schemas will help to ensure consistency of systems developed and interoperability. A leading-in period will take place to provide an opportunity to test how different software products interface and provide assurance.

Q27(a): Do you agree that works notified under the existing system and not commenced within three months of the new Regulations coming into force should be deemed to have lapsed?

Response: There were 134 replies. 97% (130) of those who responded said they agree. This is made up of 100% (23) of the utilities (plus all 7 utility representative bodies) that responded and 95% (92) of the authorities (plus 8 of the 10 representative bodies) that responded.

Q27(b): In these circumstances, a new notice should be sent following the notice periods set out in the new Regulation. Are there any problems with this approach?

Response: There were 143 replies. 15% (22) of those who responded said they see problems. This is made up of 22% (5) of the utilities (plus 4 out of 7 utility representative bodies) that responded and 3% (3) of the authorities (plus 6 of the 9 representative bodies) that responded.

Notices lapse after three-months

The consensus of respondents was that this period was adequate, although it might have a minor impact on planning of some major works during the transition period. However, this was seen as manageable providing early starts were reasonably agreed.

There were other suggestions of 4 months (to allow for works noticed under the existing regulations to be lapsed before the new three-month advance notice period) and 6 months.

Welsh Assembly Government Decision: It has been agreed that works notified under the 1992 Regulations should be dealt with as follows:

- Those with a start date before 1 April 2008 and not begun by 22 April 2008, lapse.
- Those with a start date between 1 April 2008 and 30 June 2008 and not begun within 15 working days of planned start date, lapse.
- Those with a start date after 30 June 2008 and works promoters will need to apply again for a new advanced notice under s54(1).

Q28: Do you agree that permanent reinstatements for works carried out under the existing Regulations and not noticed or completed under the existing regulations, should be treated as new works and follow the noticing requirements of the new Regulations?

Response: There were 144 replies. 71% (102) of those who responded said they agree. This is made up of 33% (8) of the utilities (plus 3 out of 7 utility representative bodies) that responded and 80% (77) of the authorities (plus 6 of the 9 representative bodies) that responded.

For

A number of those that agree with this proposal did so on the proviso that there was only one works reference number for the life of the works and that the new and old systems could interact.

Against

There were 34 responses saying that permanent reinstatements for works carried out under the existing regulations and not noticed, or completed, under the existing regulations should be completed under the existing regulations. The respondents felt that this would make it easier to complete the cycle and avoid confusion. Some also questioned whether the existing regulations could be overridden by the new ones.

It was highlighted that the proposed new regulations reduce the period between interim and permanent reinstatement from six to three months. Therefore, the transition would need to be the maximum of this period.

Welsh Assembly Government Decision: It has been agreed, following comments and discussion that the period in which an undertaker must complete the permanent reinstatement should be changed to "as soon as reasonably practicable, and in any event within six months of the completion of the interim reinstatement". The 3-month period was considered too short in certain circumstances. Works noticed before 1 April 2008 and completed to interim or permanent reinstatement follow the 1992 Regulations. Works noticed after 1 April 2008 including permanent reinstatement of works completed to interim under the 1992 Regulations, follow the new 2008 Regulations.

Q29: Do you envisage any problems with setting a final date for use of the existing EToN system for works notified under the 1992 Regulation? If so how might these be mitigated?

Response: There were 135 replies. 33% (44) of those who responded said they envisage problems. This is made up of 54% (13) of the utilities (plus 2 out of 7 utility representative bodies) that responded and 27% (24) of the authorities (plus 3 of the 9 representative bodies) that responded.

Potential problems of a final date

A risk identified (in 7 responses) was that associated with the time for software houses to develop, install and test software and iron out teething problems. It was therefore suggested that the final date should be set in liaison with software developers.

Some respondents (5) suggested that this end date should be no more than four months after the new EToN system was introduced, whereas others (3) thought that this was insufficient time to ensure all notices on the system were closed.

Another point raised (10 responses) was that works under the existing regulations would take 2 years (other periods of up to 6 years mentioned) to stop being live, taking into account guarantee periods and inspections. It was suggested that data in the old system should at least be viewable to control defects and other issues.

Welsh Assembly Government Decision: For questions 28 and 29 the important issues to consider are:

- The existing system needs to remain for a reasonable period for works noticed under existing regulations, but there needs to be a cut-off period because there will be confusion if two systems are run in parallel.
- The need to retain data contained in notices so that their contents can be referred to in the future for inspections, remedial works and guarantee. It should be noted that EToN is about how data is exchanged and that this should not effect how information about each set of works is used or analysed.

Therefore, notices should not be exchanged using EToN v.3 after 1 August 2008.

Q30(a): Are the options for handling major works with a long duration during the transition suitable? What other options are there for handling such works?

Response: There were 115 replies. 70% (81) of those who responded said they are suitable. This is made up of 15% (2) of the utilities (plus all 3 utility representative bodies) that responded and 74% (61) of the authorities (plus all 8 representative bodies) that responded.

Q30(b): Would you prefer just one approach set out in the Code of Practice or would you prefer to negotiate suitable arrangements on a case-by-case basis? If so, what?

Response: There were 134 replies.

One Approach

56% (21% (5) of utilities, and 67% (58) of authorities (plus 8 of 9 representative groups), that responded). Those that were in favour of a single approach being set out in the code of practice felt that this would be easier and avoid uncertainty and inconsistency. However, some said that case-by-case approach may be required at times and that any single approach would need to be clearly specified to avoid uncertainty. There was also concern that IT systems might not be able to cope with a single approach.

Case-by-case

44% (79% (19) of utilities (plus all 7 representative groups), and 33% (29) of authorities that responded). Those in favour of a case-by-case approach saw it as the best option because each set of major works was likely to have different requirements and circumstances. Respondents said that this would work as statutory undertakers and highway authorities would be able to come to mutual agreement and as there was unlikely to be many of these type of works this approach would be manageable.

Alternatives

Another option suggested was to transfer data to EToN XML automatically in order to avoid the problem.

Welsh Assembly Government Decision: A single approach will be included in the Code of Practice (section B8), but Statutory Undertakers and Highway Authorities may make alternative arrangements with mutual consent so there is a degree of flexibility.

Other Issues Arising from Consultation Responses

Charges for Unreasonably Prolonged Occupation of the Highway

Regulation 7(4) has been revised so that "non excavation activities" and "bar holes" are exempt from these charges.

Registers, Notices, Directions and Designations

The Introduction of the Code of Practice has been revised to clarify the statutory framework within which local highway authorities and statutory undertakers are working.

Greater emphasis on the provision of forward planning information for longer term planned works to help co-ordination and the use of early starts has been included in the Code of Practice.

Mention of a six-digit grid reference number being important for providing reasonably accurate information on location of works for input into the register, has been included in the Code of Practice.

Street Works Registers

Regulation 4 (5) Table item 5 has been revised so that the information regarding street authority works for road purposes and major highway works includes "description, timing and location".

Immediate Works

Clarity was sought as to whether certain works, currently dealt with under daily works notices, would be 'immediate' or 'minor' works ie water leaks. As a result, the Code of Practice has been clarified to ensure there is awareness about when the terms 'emergency' or 'urgent' may be cited.

Notice Validity

The section of the Code of Practice on "Notice Validity" has been revised so that Section 54 of the 1991 Act regarding 'Advance Notice of certain works' is fully addressed.

Reinstatements

It has been agreed that inclusion of a short description of the shape of the reinstatement in the Notice of Completion of Reinstatement is not required and as such this has been removed from Regulation 18 (2).

It has been agreed, following comments and discussion, that the period in which an undertaker must complete the permanent reinstatement should be changed to "as soon as reasonably practicable, and in any event within six months of the completion of the interim reinstatement". This was previously "in any event within 3 months" but it was felt that this might prove to be too short a period in certain circumstances.

Restrictions under Section 58 or 58A

It has been added to Regulation 11(5) that a copy of the notice of a restriction following substantial road works should be given to those that have submitted a written request asking for a copy of any such notice.

Service of Notices

It has been included in the Code of Practice that certain local highway authorities may be able to respond between 4.30pm and 8.00am so undertakers need to clarify if local highway authorities are doing so.

List of Respondents

Anglian Water
Ashington Associates
Association of Geographic Information
Balfour Beatty Power Networks
Bath & NE Somerset Council (LSG Cust)
Bolton Council
Bolton MBC (LSG Custodian)
Borough of Poole (LSG Custodian)
Bracknell Forest Borough Council
Bridgend County Borough (LSG Custodian)
Bridgend County Borough Council
Brighton & Hove City Council
Bristol City Council
Bristol Water Plc
British Horse Society
Buckinghamshire County Council
Bury MBC
Calderdale MBC
Cambridge Water Company
Cambridgeshire County Council
Cardiff County Council
Carmarthenshire C C
Carmarthenshire C C (LSG Custodian)
Central London SWG & NE London SWG
Central Networks
Ceredigion County Council
Cheshire County Council
City of Bradford Metropolitan District Council
Clancy Docwra
Clear Channel UK (Adshel)
Consumer Council for Water
Cornwall CC (LSG Custodian)
Cornwall County Council
County Surveyors' Society
Coventry City Council (LSG & LLPG Cust)
Cumbria County Council
Darlington Borough Council
Derby City Council
Derby City Council
Derbyshire County Council
Devon
Digital National Framework
Doncaster MBC
Dorset County Council
Dorset Fire & Rescue Service
Disabled Persons Transport Advisory Committee
Department for Regional Development Northern Ireland

Durham County Council
Dwr Cymru Welsh Water
East Midlands HAUC (Highways Side)
East Midlands Joint Utilities Group (EMJUG)
East Riding of Yorkshire Council
EDF Energy (EPN - LPN - SPN) Plc
Energy Networks Association
Essex County Council
Essex County Council (street works section)
Exor Corporation Ltd
Flintshire County Council
Folkestone & Dover Water Services
Gateshead Council
Gloucestershire County Council
Greenwich Council
Gwynedd County Council
Halton Borough Council
Hampshire County Council
Hartlepool Borough Council
Hertfordshire County Council
Highways Agency
Hull City Council
Hull City Council (LSG Custodian)
IDeA (Street Gazetteer Custodians)
Institution of Civil Engineers and Institute of Civil Engineering Surveyors
Intelligent Addressing
Kent CC (LSG Custodian)
Kent County Council
Kent Fire and Rescue Service
Kent HAUC (Highways side)
Kirklees Metropolitan Council
Kirklees Metropolitan Council (LSG Cust)
Knowsley MBC
Lancashire County Council
Leeds City Council
Leicestershire County Council
Lincolnshire County Council
Liverpool City Council
Liverpool City Council (LSG Custodian)
London Borough of Barnet
London Borough of Bexley
London Borough of Brent
London Borough of Bromley
London Borough of Camden
London Borough of Croydon
London Borough of Dagenham (NE L SWG)
London Borough of Enfield
London Borough of Hackney
London Borough of Haringey
London Borough of Harrow

London Borough of Havering
London Borough of Islington
London Borough of Lambeth
London Borough of Lewisham
London Borough of Merton
London Borough of Newham
London Borough of Redbridge
London Borough of Sutton
London Borough of Wandsworth
London Councils
London Fire & Emergency Planning Authority
LSG South West GOR Custodians Group
Manchester City Council
MapInfo
Mayrise Ltd
Metropolitan Borough of Wirral
Mid Kent Water
Milton Keynes Council
National Grid (also comments from NJUG)
National Street Works Highways Group
National Underground Assets Group (NUAG)
North East Highway And Utilities Committee (Highways Side)
Network Rail
Newcastle City Council (Street Management)
Newcastle City Council (Traffic Management)
National Joint Utilities Group
Norfolk County Council
North Somerset
North Yorkshire County Council
Northamptonshire County Council
Northern Electric Distribution Ltd (NEDL)
Northumberland County Council
Northumbrian Water
Nottinghamshire County Council
NTL:Telewest
OFWAT
Olympic Delivery Authority
Openreach (a BT Group Business)
Ordnance Survey
Pembrokeshire County Council
Peterborough City Council
Plymouth City Council (LSG Custodian)
Powys County Council
Reading Borough Council (LSG Custodian)
Rochdale
Royal Berkshire Fire and Rescue Service
Royal Borough of Kensington & Chelsea
Royal Borough of Kensington & Chelsea (LSG)
Salford City Council
Sandwell MBC

Scottish & Southern Energy plc
Scottish Power Energy Networks
South East Street Works Highways Group
Sefton Council
SEJUG (South East Joint Utility Group)
Severn Trent Water
Sheffield City Council
Shropshire County Council
Solihull MBC
Somerset
South East Traffic Manager's Group
South East Water Ltd
South Gloucestershire
South London Street Works Group
South Staffordshire Water Plc
South Tyneside Council
South West Street Works Highways Group
Southampton City Council
Southampton City Council (LSG Custodian)
Southern Gas Networks
Southern Water
Staffordshire County Council
Staffordshire Fire and Rescue Services
Staffs County Council (LSG Custodian)
Stoke on Trent City Council
Suffolk
Sunderland City Council
Surrey County Council
Surrey Fire and Rescue Service
Swindon Borough Council
Swindon Borough Council (LSG Custodian)
South West Joint Utility Group
Symology Ltd
Telford & Wrekin Council
Thames Water
Three Valleys Water
Thus plc
Torbay Council
Torbay Council LSG Custodian
Trafford Borough Council
Trafford MBC (LSG Custodian)
Transport for London
UK Society for Trenchless Technology UKSTT
United Utilities plc
Vale of Glamorgan Council
Wakefield MDC
Wales & West Utilities Ltd
Walsall Council
Warwickshire County Council
Water UK

Wessex Water
West Berkshire Council
West Midlands Joint Utilities Group (WMJUG)
West Sussex County Council
Western Power Dist (S Wales & S West)
Wigan Council
West Midlands HAUC (Highways) & Traffic Management Forum West Midlands
Wokingham District Council
Worcestershire County Council
Yorkshire Electricity Distribution plc (YEDL)
Yorkshire Water