

EXPLANATORY MEMORANDUM TO
THE STREET WORKS (CHARGES FOR UNREASONABLY PROLONGED
OCCUPATION OF THE HIGHWAY) (WALES) REGULATIONS 2009

2009 No. [XXXX]

1. This explanatory memorandum has been prepared by the Department of Economic Development and Transport and is laid before the National Assembly for Wales in accordance with Standing Order 24.1.
2. **Description**
 - 2.1. These Regulations provide highway authorities with the power to impose charges on undertakers where street works overrun the longer of the agreed or prescribed period, thereby potentially reducing the number of occasions where such works overrun.
3. **Matters of special interest to the Subordinate Legislation Committee.**
 - 3.1 None.
4. **Legislative Background**
 - 4.1 Part III of the New Roads and Street Works Act 1991 makes provision for street works carried out in England and Wales. Since devolution, the Welsh Ministers have exercised these powers, with respect to Wales. These powers were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999, article 2 schedule 1. By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006, they were transferred to the Welsh Ministers.
 - 4.2 In Part III, "street works" means works executed by an undertaker to lay, maintain, repair etc apparatus in a street under either a statutory right or a street works licence, as well as works required for or incidental to such works. Undertakers are mainly utility companies, but can be persons granted a street works licence to carry out street works. Part III imposes duties on highway authorities and undertakers in relation to the noticing, execution and coordination of street works, and to the carrying out of such works to a satisfactory standard.
 - 4.3 Section 74 of the 1991 Act provides a power for Regulations to be made to permit highway authorities to impose a charge ("overrun charges") on undertakers, where the duration of street works extends beyond either a period agreed between the parties as reasonable, or that prescribed in Regulations made under section 74.
 - 4.4 Section 74 has been amended by the Transport Act 2000 ("the 2000 Act") which extended the scope of Regulations made under section 74. Regulations may now include the power to allow highway authorities to

prescribe more than one rate of charge in respect of the same description of works and to prescribe exemptions from any requirement to pay charges or to waive or reduce them.

4.5 These regulations will follow the affirmative resolution procedure.

5. Purpose and intended effect of the legislation.

5.1 Works in the highway affect all road users by causing delays or congestion. These Regulations support the Welsh Ministers objective "*to sustain economic growth and improved productivity through reliable and efficient transport networks.*"

5.2 Since the 1991 Act came into force, there has been a marked increase in the number of statutory undertakers and consequently the number of street works carried out each year. There are now some 200 utility companies, who have the statutory right to place and maintain apparatus in the highway.

5.3 The introduction of the 2001 Regulations in England resulted in a reduction in the number of overrunning works and the amount of time where a site is occupied but no work is taking place.

5.4 Following a judgment by the Court of Appeal in 2003, there was some confusion amongst both highway authorities and undertakers over the application of the section 74 charging regime in England. Consequently, taking into account the consultant's report, the judgement of the Court of Appeal and representations from relevant bodies, a decision was taken by the Department of Transport and the Welsh Assembly Government to prepare fresh Regulations.

5.6 The policy and detailed changes have been developed in association with HAUC (UK) ("the Working Group") - a body that assists the Welsh Ministers in arriving at proposals for new street works legislation. It is made up of representatives from local highway authorities (including those from Wales) and undertakers.

5.7 The proposed regulations will be the first to come into force in Wales.

6. Implementation

6.1 The introduction of these regulations will allow Highway Authorities to choose whether they wish to introduce a Section 74 scheme or not. The benefits of such a scheme are that both Utility and Highway Authority give greater consideration to how long street works will take to complete, and the traffic delay and congestion that work may cause.

6.2 Failure to implement these regulations would remove the option of introducing a Section 74 scheme from Highway Authorities and

damage their ability to carry out their Network Management duties as detailed under the Traffic Management Act 2004.

7. Consultation

The results of consultation exercises are shown in the attached Regulatory Impact assessment.

8.0 Regulatory Impact Assessment (RIA)

Objective

8.1 *The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (Wales) Regulations 2009* (“the 2009 Regulations”), along with those for *Street Works (Registers, Notices, Directions and Designations) (Wales) (No.2) Regulations 2008* (“the Notices Regulations 2008”), are a key element in the Welsh Assembly Government’s strategy to tackle congestion through better use of the existing network, especially those elements that are to be delivered by the Traffic Management Act 2004. The objective of the 2009 Regulations is to help reduce the number of occasions where street works in the highway take longer than is necessary. This should reduce the inconvenience and disruption of street works, as overrun charges provide an incentive to minimise their occurrence.

Options

8.2 Do Nothing - Works in the highway by statutory undertakers can limit the amount of road space available to traffic leading to congestion and disruption. Some of the resulting disruption is inevitable, given the need to carry out the works. Without the proposed legislation Highway Authorities will be unable to minimise this disruption by ensuring that Utilities take no longer than necessary to do the works.

8.3 Introduce the Regulations as proposed. – Highway Authorities will under the regulations be able to choose whether to introduce a Section 74 scheme or not. It is believed that most if not all Authorities will adopt Section 74 as it enables far greater control over the duration of works carried out by Undertakers on the highway.

Costs and Benefits

Sectors and groups affected

8.4 The 2009 Regulations affect all Welsh local authorities and undertakers and their contractors that undertake street works within Wales. There would be no material differences in the impact on other businesses, voluntary organisations and charities or people in different social groups. Reducing the number of overrunning street works will have an impact on all individuals who use the road

network. The benefits of being able to better control these activities for road users are many, including:

1. * congestion is reduced, with benefits for air quality and other aspects of the environment
 1. * business can operate more efficiently through quicker and more reliable delivery of goods, service of customers, etc
 1. * people are able to access their destinations more easily, saving time and effort
 1. * public transport can operate more easily, potentially further relieving congestion on the road by maximising the use of the existing network.
- 8.5 The exact scale of the benefits likely to flow from the changes to the existing system depend upon how far undertakers, who do not fully comply at present, improve their performance and are able to reduce slack time where a street is occupied but no work is being undertaken. It will also depend upon whether street authorities more actively pursue undertakers who fail in their duties and obligations. Overrun charges will support the requirements of the Notices Regulations 2008 and Network Management Duty.

Annual Costs of Delays Caused By Street Works

- 8.6 By focussing charges on more significant works on busier roads and through increasing the level of charges, the 2009 Regulations should reduce overrun levels (and hence disruption costs). The benefits of the 2009 Regulations can not be separated from those delivered by Notices Regulations 2008, which this set of Regulations and *The Street Works (Fixed Penalty Notices) (Wales) Regulations 2008* support. The benefits from a reduction in the congestion caused by street works will depend on the interaction of all three Regulations.
- 8.7 Two studies have been carried out in England to assess the level of disruption caused by works in the street. Halcrow produced a report in July 2004 for the Department for Transport which estimated the annual costs of disruption caused by utility works in England in the year 2002/03 at some £4.3 billion (2002 values). This Impact Assessment bases its calculation of benefits on this work. In response to this, National Joint Utilities Group (NJUG) commissioned Professor Phil Goodwin to review Halcrow's findings. This study adopted a different approach and provided a £1 billion estimate of the cost of congestion caused by street works. Although this is a large variation, it does confirm that the cost of this congestion has a significant impact on the operation of the road network.
- 8.8 No similar studies have been carried out in Wales, but as the type of works carried out in the street are exactly similar to those carried out in England, the studies can be said to relate to Wales also. England has had the benefit of Section 74 Regulations since 2001 and the studies have been based on this experience. When considering estimated costs and benefits, the figures for Wales will be approximately one tenth of those attributed to England, based on there being approximately 120,000 street works in Wales annually.

- 8.9 The Welsh Assembly Government considers the Halcrow calculation to be more robust as it draws on a larger disaggregated database. It is based upon the estimated annual number of street works of 1.2 million. This figure was extrapolated from a sample of local authorities' notices and was validated by the statutory undertakers.
- 8.10 Halcrow provided detailed estimates of the disruption caused by individual works, which can vary according to a series of factors, such as the duration of the work, the traffic flow on the specific road on which they are carried out, whether the roads are single or dual carriageway, the size of the works and even whether works are carried out in rural or urban areas.
- 8.11 The Halcrow study modelled street works as constrictions, which reduce the capacity of the carriageway, reducing traffic speeds and causing delays. A variety of street works, typical of the range experienced by highway authorities, were assessed. This information was contained in actual notices provided by 25 sample authorities. The impact of street works was derived from:
1. * The dimension of the works, as approximated by the length of the works.
 2. * The type of road, as approximated by the reinstatement category of the road.
- 8.12 The modelling techniques (QUADRO¹, SATURN² and micro-simulation models such as VISSIMTM) used took into account the availability of diversionary routes to road users, which tend to be more restricted in the case of rural networks than congested urban networks. Further work was done to relate the area of reinstatement from the notices to the actual area occupied, as it was found that this affected the extent of the disruption.
- 8.13 Data from the traffic models were used to construct tables of daily delay cost rates for rural and urban roads (see table 1). Table 1 contains delay cost rates for street works of different dimensions, and streets with different reinstatement categories. This helped to simplify the process of estimating the daily cost of delay for any works.
- 8.14 Information such as journey purpose, vehicle occupancy or vehicle type is usually used to calculate the value of time. This information was not available from the notices provided, so the value of time adopted for this exercise was the 'average vehicle' cost. Using the recommended government values for economic appraisals, this cost is £11.81/hr at 2002 values [Source: Values of Time and Operating Costs, Dft TAG Unit 3.5.6, April 2004³].

¹ Queues And Delays at Roadworks

² Simulation and Assignment of Traffic to Urban Road Networks

³ <http://www.webtag.org.uk/archive/jun04/pdf/jun04-356.pdf>

Table 1: Daily Cost of Street Works by Reinstatement Category and Length

Rural Roads					
Reinstatement Category*	AADT**	10m	50m	100m	200m
0	<320,000	£2,500	£3,000	£3,300	£4,000
1	16,000	£7,850	£9,050	£10,250	£11,000
2	12,000	£1,610	£2,100	£2,600	£3,530
3	8,000	£780	£970	£1,200	£1,625
4	4,000	£335	£415	£515	£700
Urban Roads					
Reinstatement Category*	AADT**	10m	50m	100m	200m
0	40,000	£25,000	£25,000	£25,000	£25,000
1	24,000	£9,000	£12,000	£15,000	£17,000
2	16,000	£3,450	£5,150	£7,000	£8,800
3	10,000	£385	£535	£710	£1,025
4	6,000	£200	£280	£375	£550

* As defined in *Specification for the Reinstatement of Openings in Highways - Second Edition (2002)*. Reinstatement Category 0 roads are assumed to be dual carriageway roads, Reinstatement Category 1,2, 3 and 4 roads are assumed to be single carriageways. Reinstatement Category is used as a proxy for how busy a road is.

** Annual Average Daily Traffic

8.15 Delay costs of works vary according to a number of factors. For example, a works that is 50 metres long in an urban road with a daily traffic flow of 40,000 vehicles might cause £25,000 of disruptions a day. In contrast, a 10-metre long works on a rural road with a daily traffic flow of 4,000 vehicles may by comparison only cause £335 of disruption a day.

8.16 Application of the costs in table 1 from the 25 sample authorities to all 150 local authorities shows that the estimate of annual delay at street works in England for the financial year 2002/3 is £4.36 billion (2002 prices). Table 2 provides this information by sector.

Table 2: Delay Costs (£m) for all English highway authorities by sector for Financial Year 2002/3

Electricity	Gas	Telecoms	Water	All Sectors
1,241	1,202	535	1382	4,360

8.17 Uncertainties over the value of £4.36bn include the following:

- There is a lack of accurate definition of the area occupied by, and of the location of, the works in the carriageway

- The omission of minor works without excavation, some of which entail occupation of the carriageway.
 - The uncertain relationship between traffic flow and reinstatement category.
 - Where there is an absence of reliable gazetteer information (as is the case for 85% of all works), the lowest reinstatement category (4) has been assumed.
 - The estimated level of disruption does not apply to pedestrians, cyclists, public transport users or other road users.
- 8.18 Using the GDP deflator tools available on the HM Treasury website⁴ we can see that the annual cost of delays caused by street works is £4.70bn, in 2005 prices, or £4.96bn in 2007 prices

Benefits

8.19 It has been estimated that overrun charging provisions could be better applied in respect of 22.6% of works undertaken (the percentage of works to which the section 74 charging scheme is to apply). Further work by Halcrow on the potential to reduce road user delay for the Department of Transport, suggests 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. As mentioned earlier, the exact scale depends how well both highway authorities and utility companies comply. It is hoped that, by refining the charges and clarifying the legal situation, the 2009 Regulations will increase usage of section 74 powers, thus increasing compliance. The findings of the 2007 Consultation suggest that at least 97% of highway authorities will use the new 2009 Regulations to operate overrun charging schemes.

8.20 Table 3 sets out, in broad terms, the potential direct financial benefits to road users (including businesses, private drivers and public transport users) derived by reducing overrunning utility works, based on Halcrow's figures.

Table 3: Potential financial benefits from reduction in days of overrun		
% reduction in overruns	Benefit (2005 prices)	Benefit (2007 prices)
1%	£10.6 million	£11.2 million
2%	£21.3 million	£22.4 million
5%	£53.1 million	£56.1 million
10%	£106.3 million	£112.1 million

8.21 Assuming that the new Regulations achieve the suggested 5% reduction in overruns, over a twenty year period the total benefit will be £1,122m and assuming a discount rate of 0.035, we can see that the total benefit (over 20 years) will be £825.2m in Present Value. The average annual benefit is £56.1m (2007 prices)

⁴ http://www.hm-treasury.gov.uk/economic_data_and_tools/gdp_deflators/data_gdp_index.cfm

Costs

8.22 Since the initial consultation, further work has been undertaken to consider the number of works the revised charging scheme will impact by an increase or decrease in the costs which it imposes on utilities compared with the existing scheme (as this will obviously depend upon how many works overrun in future and by how long).

8.23 The change in the level of costs to undertakers comprises four elements:

2. * increasing the daily overrun charges;
3. * changes to the existing categorisations of works;
4. * reducing the duration below which works cannot attract charges from 3 days or less to 2 days or less;
5. * the inclusion of a mitigated charge, where a nominal penalty of £100 is levied where the undertaker has endeavoured to clear the site but a single item of signing, lighting or guarding has been left on site but cleared by the end of the next working day, as opposed to the full penalty.

8.24 Halcrow have carried out a study of works which overran in the final year of their previous study (ie 2003/04) based on the old works category types and converted these to the new works category types which would apply under the proposed new scheme. Their findings are set out in Table 4

Works Category	Road Category 0, 1 or 2	Road Category 3 or 4	Total
Major & Standard	84,782	370,614	455,396
Minor with excavations	9,378	44,701	54,079
Urgent & Emergency	34,070	131,250	165,320
Total	128,230	546,565	674,795

8.25 Based on the extent to which works overran in 2003/04, Halcrow have calculated that under the existing 2001 Regulations, undertakers would have been liable for charges of approximately £301.5m. This has been calculated assuming that all highway authorities run an overrun charging scheme and enforce it fully.

8.26 Had the 2009 Regulations been in place, Halcrow estimated that the total amount for which undertakers would have potentially have been liable in section 74 charges would vary between £243.1m and £338.7m, depending on the extent of non-excavatory works. The Department for Transport has assumed that the actual liability falls between these two extremes i.e. approximately £290.9m. This represents a decrease of 3.51% compared with the potential liability under the existing 2001 Regulations. These figures have been calculated on the basis that all local highway authorities would operate a section 74 scheme and apply charges rigorously.

8.27 The Department for Transport is aware of several examples of where the mitigated charge could have been used. However, it has not been possible to calculate how many times it would have been levied in a given year on a

national basis. Therefore, any reduction in the total potential liability cannot be calculated. The Department considers that the mitigated charge will help ease tensions between local authorities and undertakers, thus helping improve co-ordination efforts.

- 8.28 In the 2007 consultation, the Department of Transport sought to identify how many highway authorities currently operate an overrun charging scheme and how many will run one when the 2009 Regulations come in to force. Of the 88 highway authorities responding, 93% said that they operate an overrun scheme and almost 98% indicated that they would in the future. The Department of Transport considers that if these responses are typical of all the English local authorities, the assumption used to calculate the maximum potential liabilities are valid. A similar response would be expected from Welsh authorities.
- 8.29 The behaviour change expected is to remove or reduce the time where a street is occupied but no works activities are being carried out (e.g. reducing the time between completion of work and reinstatement). There is an optimum level of resource that can be applied to a set of works and simply increasing the resource level will not necessarily produce a proportional increase in productivity and corresponding reduction in the liability of section 74 overrun charges. The additional cost to undertakers lies in the need for additional planning and programme staff rather than operatives. Therefore, this is the cost considered to enable section 74 overrun charges to be avoided.
- 8.30 It is assumed that there will be one undertaker from each of the electricity, gas and water sectors and 2 from the telecoms sector (BT plus one other) in each of the 150 highways authorities. Assuming the additional planning work required to mitigate the section 74 overruns could be undertaken by 0.5 full time equivalents (FTEs) per undertaker, a resource of 375 FTEs would be required. This would be at an approximate total 'cost of change' of £29m, based on an average salary of £35k and a 120% on-cost (2007 values). The 120% on-cost is an estimate of the type of non salary costs that undertakers would incur in employing a resource (e.g. National Insurance, Pension, business overheads, etc.).
- 8.31 The need for additional planning (but not necessarily planners) will be on going and it may be assumed that the additional burden on industry will have been absorbed 5 years after the Regulations come into force. It is hoped that undertakers will undergo a cultural change, which means that works will, in the longer term, be better planned without the need for additional planners.
- 8.32 Assuming that the financial burden of the new planners is absorbed at a steady rate over 5 years (i.e. a straight-line decrease of £5.8m/year from 2009 onwards), the total cost to undertakers over the twenty years after implementation will be £87m (2007 values), or £83.2m in Present Value terms. This equates to an average annual cost of £4.4m (2007 prices). There are currently some 200 undertakers who can carry out street works; this means that the average cost to an undertaker will be approximately £87,000 per year for the first 5 years. The costs will not fall evenly over the 20 years and are concentrated in the first 5 years.
- 8.33 It may also be possible that undertakers will be able to provide incentives so that their existing planners work more effectively, which would reduce the need

for additional planning staff. It is not possible to estimate the cost of this, or the effect on the need for planning.

- 8.34 Given that the costs would only apply to works that overrun and are avoidable it is impossible to accurately predict the liability. Halcrow have estimated that the total liability could be in the region of £290.9m based on the level of overruns observed in their study of the scheme. NJUG has estimated that the increase in section 74 charges will cost its members an additional £12m a year. It must be noted that if street works are better planned, the liabilities faced by the undertakers will be reduced i.e. if no works overrun, no charges can be levied.
- 8.35 Table 5 provides a comparison of the potential liability faced by firms in terms of Section 74 charges, for overrunning on street works, against the cost of improved planning, in the first year the Regulations are introduced. The costs of improved planning in the first year are around eight to eleven times lower than the potential liability undertaker's face. It is reasonable to expect undertakers will use better planning to avoid works overrunning, even if this initially costs more staff time.

	Electricity	Gas	Telecoms	Water	Totals
Improved planning	£5,655,000	£5,394,000	£5,887,000	£12,064,000	£29,000,000
<i>Potential liability * (low estimate)</i>	£82,144,000	£72,813,000	£30,212,000	£57,978,000	£243,147,000
<i>Potential liability * (average)</i>	£85,066,500	£98,301,500	£32,614,000	£74,963,000	£290,945,000
<i>Potential liability * (high estimate)</i>	£87,989,000	£123,790,000	£35,016,000	£91,948,000	£338,743,000

* If undertakers invest in better planning, then the potential liability will be mitigated.

- 8.36 Changes will be needed to the systems, both electronic and paper, which are used by authorities and undertakers to exchange information on individual works to accommodate the revised classifications of works and notification periods which will result from the Notices Regulations 2008. The associated costs were outlined in the Regulatory Impact Assessment for those Regulations⁵. The changes introduced as a result of the revised section 74 charging scheme should only require minor changes on top of this and have a minimal impact on the costs.
- 8.37 Meetings have been held with the developers of the software used to run the noticing systems in both authorities and utilities, to discuss the implications of the changes and what this means for the systems.
- 8.38 Highway Authorities will incur some costs associated with running the section 74 charging scheme. It is intended that monies gained from section 74 charges will be used to offset the operating costs of the scheme with any excess used to develop policies to promote and encourage safe, integrated, efficient and

⁵ <http://www.dft.gov.uk/consultations/closed/keepingtrafficmovingfollowup/partialriaforregistersnotice1742>

economic transport facilities and services. As such, there should be no net additional cost to highway authorities. It must be noted that section 74 charges are not intended to be a revenue source for highway authorities.

Impact on Admin Burdens Baseline

8.39 As the 2009 Regulations replace the existing 2001 Regulations, the Department of Transport does not believe that there will be any increase in Admin Burdens. Undertakers already pay for the cost of paying for overrun charges. The 2009 Regulations change the amount to be paid but not the cost of payment. In addition, because of the Notices Regulations and the Electronic Transfer of Notices (EToN) system, undertakers will already have the facilities in place to deal with section 74 noticing requirements. In Wales, many Highway Authorities and Utilities already have the Section 74 software and operate with it. Most will already have it installed in their operating systems and will merely need to switch it on. Most utilities in Wales also operate in England and will have been using the Section 74 software for some time.

8.40 There may be a possibility that the Admin Burdens baseline will be reduced as the EToN system will allow for industry wide efficiency savings i.e. EToN will be faster (and thus ultimately cheaper) than some existing noticing systems.

Balance of costs and benefits

8.41 On balance, the Department for Transport believes that the changes will be beneficial in that they will ensure that resources are concentrated on managing better those works which are most likely to cause disruption, whilst also being likely to reduce the overall cost burden on utilities. An investment of £29m in additional co-ordination effort in the first year of implementation will mitigate the potential liability of £290.9m for section 74 overrun charges and produce a direct minimum benefit of £56.1m in reduced road user delays costs. Table 5 provides a summary of all costs and liabilities arising from the revised section 74 Regulations.

8.42. Given that it is possible to mitigate the potential liability, the Department for Transport thinks it is reasonable to assume that the only cost will be that of improved planning. Table 6 below demonstrates the schedule of costs and benefits over time.

Table 6: Benefits and Costs for Section 74		
Year	Annual Benefits (2007 prices)	Annual Costs (2007 prices)
1	£56.1m	£29m
2	£56.1m	£23.2m
3	£56.1m	£17.4m
4	£56.1m	£11.6m
5	£56.1m	£5.8m
6 onwards	£56.1m	£0

8.43 Therefore, the net benefit of the new Regulations, over the twenty years following implementation, will be £742m (£74.2m in Wales) (i.e. Total Benefit of

£825.2m less the Total cost of £83.2m (Present Value / 2007 prices)). It must be remembered that if the new Regulations result in reductions of more, or less, than 5%, in works durations, the Net Benefit will change. For example, if a 10% reduction is realised then the Net Benefit will increase to £1,565.8m.

Competition Assessment

- 8.44 A competition filter test was carried out on the likely effect of the Regulations. The Regulations would affect four sectors within the private sector: (i) water utilities, (ii) electricity utilities, (iii) gas utilities and (iv) telecommunications utilities. Water and electricity companies operate on a regional basis, rather than in direct competition to each other. In the water sector companies operate local and regional monopolies. In the electricity sector, the distribution businesses operate on a regional basis, rather than in direct competition with each other. The gas sector has regional distribution networks that operate as regional monopolies, similar to the electricity companies. Given all the above, we do not believe that the Regulations would have a significant effect on competition in any of these three sectors.
- 8.45 The situation in the telecommunications sector is somewhat different. The sector has been regulated since the privatisation of BT in 1984 and different companies are in direct competition with each other in relevant areas such as residential and business access. Oftel has found that BT has Significant Market Power in these areas, with around 80% of the UK market.
- 8.46 The Welsh Assembly Government does not believe that there would be significant implications for competition in the telecommunications sector from the new arrangements, especially, as explained above, charges can be avoided by utilities ensuring that works are completed by the agreed deadline.

Small Firms Impact Test

- 8.47 The impact on small business should be limited as the changes being introduced would predominantly affect local and national highway authorities and utilities (ie water, gas, electricity and telecommunications companies).

Consultation

- 8.48 The proposals have been subject to three rounds of consultation. The first took place in February 2005 and ended in April 2005. Some 500 bodies were invited to comment, including all English and Welsh highway authorities, undertakers and various other representative organisations. Questions focussed on the types of activities to which charges should apply. Questions included whether category 3 and 4 non traffic-sensitive roads should be exempt completely. On this and other such questions there was a clear division between highway authorities and utilities. The consultation responses were analysed by the Working Group and it was decided that a second consultation would be needed. The consultation report can be found at: <http://www.dft.gov.uk/consultations/archive/2005/tma/>

8.49 A second 6 week consultation began in October 2006 with a similar number of organisations involved. The questions included proposals to reduce the prescribed period from 3 to 2 days to which there was no overall consensus. Another question was whether works noticed under the old Regulations should continue to be charged under those Regulations. To this there was a broad agreement to the principle, though many responses mentioned such circumstances should not continue indefinitely. Overall, stakeholders failed to reach agreement on the proposed changes. A significant concern emerged amongst undertakers that they may be treated unfairly when works were completed and cleared on time and small amounts of material were left in error. In several cases, local authorities were levying full overrun charges, although these situations caused minimal or no disruption. The Working Group sought to address that concern by proposing the concept of the mitigated charge to acknowledge circumstances where an undertaker completes the works within the agreed period, but mistakenly leaves behind on site a small amount of signing, lighting or guarding. The consultation report can be found at:

<http://www.dft.gov.uk/consultations/archive/2006/keepingtrafficmovingfollowup/keeptrafmovingreport>

8.50 A third and final consultation, dealing with the mitigated charge, was launched in October 2007 and ran for 4 weeks. Invitations were sent to about 700 stakeholders, including those who responded to the two previous consultations. Responses were received from a cross section of organisations. The consultation asked three questions dealing with the level of section 74 charges, the principle of a mitigated charge and the amount of the mitigated charge. The consultation report can be found at:

<http://www.dft.gov.uk/consultations/archive/2006/keepingtrafficmovingfollowup/keeptrafmovingreport>

8.51 In association with the Working Group, and in response to the three consultations outlined above, the Assembly Government decided on adopting the following:

a) The prescribed period would be 2 working days, (the period within which an undertaker must complete street works, unless another period has been agreed);

b) Works categories would be adopted to reflect changes in the Street Works (Registers, Notices, Directions and Designations) (Wales) (No. 2) Regulations 2008;

c) Daily charges would be more closely related to the complexity of work and the level of impact the works have on traffic;

d) A mitigated charge of £100 would be introduced to deal with situations where single items of signing, lighting or guarding had been left in error. Regulation 8(9) provides for a mitigated charge which operates as follows: when works are completed on time, noticed as clear or closed and free flow of traffic is re-established on the highway, an undertaker will be subject to a nominal one-off charge of £100 should they leave a single item of signing, lighting or guarding in error, assuming that they remove the item by the end of the following day after having been informed by the highway authority. If the undertaker fails to remove the article in question by the end of the following day, they will be liable for the full overrun charges. This proposal was to acknowledge the concerns expressed by undertakers that full overrun charges were being applied where only small amounts of material remained. The decision following consultation on the mitigated charge was to restrict it to a single item following concerns from highway authorities that undertakers may be able to store quantities of material on the highway. It was restricted to signing, lighting or guarding after highway authorities argued that if undertakers were able to leave spoil or plant on the highway in error such items were more likely to stop the free flow of traffic.

8.52 It was concluded that certain works, e.g. the creation of certain small diameter holes in the road, which involved either minimal or no excavation would be exempted from the overrun charging scheme.

8.53 Daily overrun charges will range from £2,500 for the busiest roads to £100 for the quietest roads. This allows the most significant works to be targeted in an attempt to reflect the cost of the disruption caused by overrunning works

Post Implementation review.

8.54 The Welsh Assembly Government intend to review the effectiveness of the 2009 section 74 Regulations, along with other Regulations introduced as a result of the Traffic Management Act 2004 in 2010.

Summary.

8.55 We estimate the net benefit of the new Regulations, over twenty years following implementation, will be £74,2m (present Value / 2007 Prices), based on a 5% reduction in works durations. The costs will be borne by the Utilities sector in improved works planning. That cost will be around eight to eleven times lower than the potential cost of overrun charges if works were not planned appropriately.

The experience shown in England since their original regulations in 1991 is that they resulted in a reduction of overrunning works and the amount of time where a site was occupied but no work was taking place. The proposed regulations seek to improve on those previously used in England by focussing charges on the more significant works and busier roads and thus reduce overrun levels to the maximum extent.

