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Regulatory Impact Assessment
for the
Street Works (Fixed Penalty) (England) Regulations 2005

Purpose and Intended Effect

(i) *Objective*

1. Section 41 of, and Schedules 2 and 3 to, the Traffic Management Act 2004 ("TMA") insert Section 95A and Schedules 4A and 4B into the New Roads and Street Works Act 1991 ("NRSWA"). This provides for certain offences under Part 3 of NRSWA to become fixed penalty offences and enables regulations to be made in relation to them.
2. The Secretary of State has introduced a fixed penalty notice scheme as respects England and the Street Works (Fixed Penalty) (England) Regulations 2005 are made accordingly. Whilst the TMA applies to England and Wales, the introduction of a similar scheme as respects Wales is a matter for the National Assembly.
3. The objective of introducing a fixed penalty notice system is to reduce the level of disruption caused by street works through the means of improving the quality and timeliness of information provided to street authorities.

(ii) *Background*

4. Part 3 of NRSWA details a range of statutory duties and obligations and the offences associated with failing to comply with them. All of these offences can be prosecuted in the Magistrates' Courts. However the National Street Works Highways Group has produced figures for the numbers of prosecutions over the past 10 years, which indicate the difficulties in carrying out prosecutions. The costs involved for the Authority in taking a prosecution to Court are high whilst the fines and level of costs awarded tend to be relatively low.
5. Information provided to street authorities by undertakers in various notices under NRSWA is crucial for the authorities' exercise of both their co-ordination duty under NRSWA and the Network Management Duty under the TMA. It is recognised that many notices do not contain accurate information and are not provided within the prescribed timeframes, making it difficult for authorities to fulfil their duties. The Government believes that a failure to improve the process of enforcement vis-à-vis notices could undermine the remainder of the street works legislation. As a result the TMA introduced a new Section 95A and new Schedules 4A and 4B into NRSWA, providing for the introduction of a fixed penalty system for certain offences under Part 3.
6. Initially, seven offences in Part 3 will be dealt with via fixed penalty notices, all relating to noticing provisions under sections of NRSWA. A fixed penalty notice means a notice offering an undertaker the opportunity of discharging any liability to conviction for a fixed penalty offence by payment of a penalty. A fixed penalty notice will be given to the undertaker promoting the works and not to any contractors who carry out the works. It is therefore the responsibility of the undertaker to manage the process of complying with the statutory duties and obligations under Part 3. The

DRAFT

street authorities will retain the power to take an alleged offender to the Magistrates' Court instead of giving a fixed penalty notice.

(iii) *Risk Assessment*

7. As mentioned in paragraph 4, there has been a failure to enforce the statutory duties and obligations under Part 3 of NRSWA. There is a risk that this failure would continue if a fixed penalty notice system was not implemented to make it easier to enforce aspects of those duties and obligations and to support the changes being introduced under the TMA.
8. Set against this is the possibility that charges on utilities may lead to higher prices for their customers, depending on the approach taken by the relevant regulators, if they are allowed to pass on the charges through their customers' bills. However, these charges on the utilities are avoidable, as they will only be incurred if the utility concerned fails to comply with the duties and obligations placed upon them in relation to these seven NRSWA offences.
9. It is also possible that authorities' and utilities' existing IT systems might need updating in response to the introduction of fixed penalty notices; that might lead to an initial additional cost and perhaps an additional ongoing maintenance cost. Nevertheless the introduction of a fixed penalty notice scheme will build on existing methods of sending and receiving notices and will be utilising existing payment methods.

Options

10. By way of these regulations, the Government will introduce a fixed penalty notice scheme for seven offences arising under Part 3 of NRSWA. The Government considered introducing graduated penalties but feels that it is not straightforward to make a simple link between the nature of the offence and its consequences in terms of congestion. The same notices are required for works of different sizes with different impacts and on different roads. All the seven offences are related to the issuing of street works notices and are set at level 4 (maximum £2,500) by section 40 of, and Schedule 1 to, the TMA which came into effect on 4 October 2004. Therefore, in the absence of a simple and robust link between the nature and consequence of an offence, the fixed penalty notice scheme being introduced will carry the same penalty for all offences and all categories of road.

DRAFT

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)			
An offence created by regulations made under section 74A (11)			

11. A fixed penalty notice for an offence may not be given more than [91] calendar days after the time of commission of the offence, beginning with the day on which the offence is committed. As with the existing enforcement regime it is up to the street authority to decide whether an offence has been committed and whether the giving of a fixed penalty notice is the most appropriate action.
12. The TMA set a maximum fixed penalty amount of 30% of the maximum fine for each offence - £750 in the case of level 4 offences. However, 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. These are proposed in the draft regulations.
13. The period for payment of the penalty of [£120] is [36] calendar days beginning with the day on which the fixed penalty notice is given. The street authority may extend the period for paying the penalty in any particular case if they consider it appropriate to do so. A discounted amount of [£80] is payable instead if payment is made before the end of the period of [29] calendar days beginning with the day on which the fixed penalty notice is given. If the last day of the discounted period does not fall on a working day, the period for payment of the discounted amount is extended until the end of the next working day.
14. Consideration had been given to shorter time periods for payment of the full and discounted amount. However, recognising that most of the undertakers are large organisations with necessary processes to consider a fixed penalty notice and make a payment, the periods of [36] and [29] days respectively are proposed.
15. 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, then it remains open to the street authority to prosecute the offence in the Magistrates' Court. Once a fixed penalty notice 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.

DRAFT

16. Although some of these offences have been introduced as a result of the TMA, they would all be criminal offences even if the fixed penalty notice scheme had not been introduced. This system is not seeking to impose any new obligations. Instead the objective is to tighten the current system and improve observance of the duties and obligations under Part 3 of NRSWA.

Benefits

17. The exact scale of the benefits likely to flow from the changes to the existing system will depend upon how far those undertakers who do not at present comply fully improve their performance. It will also depend upon whether street authorities more actively pursue undertakers who fail in their duties and obligations.

(i) *Economic*

18. The aim is to encourage greater compliance with the various duties and obligations under Part 3 of NRSWA, especially with respect to notices. By ensuring that street authorities are provided with timely and accurate information on individual works it should be easier for them to co-ordinate works in order to reduce the level of disruption caused to road users, businesses and local residents. Indeed the whole process is aimed at reducing the net costs of disruption to society.

19. In addition street authorities will be able to offset their reasonable costs against the fixed penalties collected from the undertakers and HM Treasury has approved the retention of surplus sums by the street authorities. These are to be used in developing policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within their areas. The policy is not driven by raising revenue. Fixed penalty notices are a means of reducing disruption through improved performance. This will not be a guaranteed source of future income for the street authority as the aim is to improve compliance, thereby reducing the number of fixed penalty notices being given

20. The proposed fixed penalty notice system should encourage street authorities to pursue offenders without imposing an unnecessary burden on the Magistrates' Courts.

(ii) *Environmental*

21. The introduction of the fixed penalty notice system is intended to reduce disruption. This will lead to reduced congestion and an improvement in the levels of air quality

22. Better noticing also feeds into a better street works register, which in turn makes it possible to operate more effective inspection regimes. The intention is that an improved noticing regime encouraged by the introduction of a fixed penalty notice system, combined with improvements resulting from other changes under the TMA should lead to an improvement in the quality of works and, in particular, the quality of reinstatements.

DRAFT

(iii) *Social*

23. There will be a general benefit to Society resulting from the introduction of a fixed penalty notice system. There will be an impetus on the undertakers to provide accurate and timely information in the form of notices to street authorities and the authorities will be able to utilise this information to facilitate their co-ordination duties. The result will be a reduction in disruption caused by street works.

Costs

24. The proposed fixed penalty notice scheme does not alter the duties and obligations placed on the street authorities and undertakers.

(i) *Economic*

25. Undertakers will only incur fixed penalty charges if they infringe the requirements placed upon them under the legislation. These costs are, therefore, avoidable. At this point, it is difficult to estimate the number of fixed penalty notices that are likely to be given. At the beginning of the scheme, it is probable that there will be more fixed penalty notices given but as matters improve then the numbers of fixed penalty notices given would decline and therefore the costs for the undertakers would decrease. In addition, it is difficult to predict the average number of fixed penalty notices that may be given as there is likely to be considerable variation between the approach taken by different street authorities and between the performance of different undertakers. The following is included to provide an example of costs but is subject to the provisos discussed above and is not intended to be an estimate of outturn:

In England there are 152 street authorities. If each street authority was to give one fixed penalty notice per week and these were all paid at the full penalty amount of [£120] then the total cost to the undertakers would be approximately [£950,000] per year (or [£790,000] if 50% are paid at the discounted amount).

26. It is likely that the street authorities and undertakers will incur some initial additional costs in operating the new arrangements.
27. Depending on the position taken by the utility regulators, OFCOM, OFGEM and OFWAT, the introduction of a fixed penalty notice system may have consequential impacts on consumers' bills if the regulators allow utility companies to pass on any additional costs in this manner.

(ii) *Environmental*

28. It is unlikely that there will be any environmental costs associated with the introduction of a fixed penalty notice system.

(iii) *Social*

29. It is unlikely that there will be any social costs associated with the introduction of a fixed penalty notice system.

DRAFT

Issues of Equity and Fairness

30. The penalty amount has been set so that it can act as a deterrent without being unreasonable. The level of [£120] ([£80] discounted amount) is significantly below the maximum of £750 which could have been set for these seven offences (30% of a level 4 fine). The same penalty level is being introduced across the country for all seven offences covered by the scheme.
31. The fixed penalty notice system will be applicable to all utility companies (electricity, gas, water and telecommunications) and to section 50 licensees. From these groups affected, it is possible that the impact on section 50 licensees could be greater than the impact on the utility companies.

Consultation with small business: the Small Firms' Impact Test

32. The impact on small businesses should be minimal as the introduction of the fixed penalty notice scheme will predominantly affect street authorities and utilities i.e. water, gas, electricity and telecommunications.
33. The fixed penalty notice system means that the penalty is given to the undertaker promoting the works as they have the duty to comply with NRSWA. This scheme may therefore have consequential implications for contractors if the undertakers pass on the costs of the fixed penalty notices paid.
34. The smaller telecommunications companies were represented on the working group drawing up the details of the fixed penalty notice system (see consultation section below) by a nominee put forward by the UK Competitive Telecommunications Association (UKCTA).
35. Representatives of small businesses will also be consulted as part of the 3 month public consultation on the draft proposals.

Competition Assessment

36. It is not expected that the proposed fixed penalty notice 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.
37. 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.

Enforcement and Sanctions

38. The responsibility for the fixed penalty notice scheme resides with the street authorities. They retain the power to take an alleged offender to the Magistrates' Court instead of giving a fixed penalty notice.

DRAFT

Monitoring and Review

39. The Government will conduct a detailed review of the first twelve months 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 fixed penalty scheme, the number of fixed penalty notices being issued, 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.
40. If desired, the Secretary of State may make an order providing for offences under Part 3 of NRSWA relating to any street works to become (or cease to be) fixed penalty offences (subject to resolution of each House of Parliament).

Consultation

(i) *Within Government*

41. The Department for Transport established a working group in March 2004 consisting of representatives of the utility industry and the street authorities. The details of the fixed penalty notice system and the level of the fines have been drawn up following a series of meetings of this working group. Consultation also took place within Government, in particular with: (i) the Department of Trade and Industry, (ii) the Department of the Environment, Food and Rural Affairs, (iii) the Department for Constitutional Affairs, (iv) the Home Office, (v) HM Treasury and (vi) the utility regulators OFCOM, OFGEM and OFWAT.

(ii) *Public Consultation*

42. The draft RIA was sent out for consultation along with the draft Guidance notes and the draft regulations on the 1st February 2005.

Summary and Recommendation

[To be completed following the consultation]

Declaration

I have read the regulatory impact assessment and I am satisfied that the benefits justify the costs

Signed

Date

Contact point

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