



# New Roads and Street Works Act 1991

## 1991 CHAPTER 22

### PART III

#### STREET WORKS IN ENGLAND AND WALES

##### *Charges, fees and contributions payable by undertakers*

#### **74 Charge for occupation of the highway where works unreasonably prolonged.**

- (1) The Secretary of State may make provision by regulations requiring an undertaker executing street works in a maintainable highway to pay a charge to the highway authority where—
  - (a) the duration of the works exceeds such period as may be prescribed, and
  - (b) the works are not completed within a reasonable period.
- (2) For this purpose “a reasonable period” means such period as is agreed by the authority and the undertaker to be reasonable or, in default of such agreement, is determined by arbitration to be reasonable, for completion of the works in question.

In default of agreement, the authority’s view as to what is a reasonable period shall be acted upon pending the decision of the arbitrator.

<sup>F1</sup>[(2A) The regulations may prescribe exemptions from the requirement to pay charges.]

- (3) The regulations may provide that if an undertaker has reason to believe that the duration of works will exceed the prescribed period he [<sup>F2</sup>shall give to the authority, in such manner as may be prescribed, notice containing] an estimate of their likely duration—
  - (a) in the case of works in connection with the initial placing of apparatus in the street in pursuance of a street works licence, together with his application for the licence,
  - (b) in the case of other works (not being emergency works), together with his notice under section 55 (notice of starting date), or

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- (c) in the case of emergency works, as soon as reasonably practicable after the works are begun,  
 and that the period stated in an estimate [<sup>F3</sup>contained in a notice given to an authority in such manner] shall be taken to be agreed by the authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.
- (4) The regulations may also provide that if it appears to the undertaker that by reason of matters not previously foreseen or reasonably foreseeable the duration of the works—
- (a) is likely to exceed the prescribed period,
  - (b) is likely to exceed the period stated in his previous estimate, or
  - (c) is likely to exceed the period previously agreed or determined to be a reasonable period,
- he [<sup>F4</sup>shall give to the authority, in such manner as may be prescribed, notice containing] an estimate or revised estimate accordingly, and that if he does so any previous estimate, agreement or determination shall cease to have effect and the period stated in the new estimate shall be taken to be agreed by the authority to be reasonable unless they give notice, in such manner and within such period as may be prescribed, objecting to the estimate.
- (5) The amount of the charge shall be determined in such manner as may be prescribed by reference to the time taken to complete the works and the extent to which the surface of the highway is affected by the works.

Different rates of charge may be prescribed according to the place and time at which the works are executed and such other factors as appear to the Secretary of State to be relevant.

- <sup>F5</sup>[(5A) The regulations may—
- (a) prescribe more than one rate of charge in respect of the same description of works, and
  - (b) provide that charges are to be paid in respect of any works of that description at the rate which appears to the highway authority to be appropriate in relation to those works.
- (5B) The regulations may make provision for the determination of the duration of works for the purposes of the regulations.
- (5C) And they may, in particular, make provision for works to be treated as beginning or ending on the giving of, or as stated in, a notice given by the undertaker to the highway authority, in the prescribed manner, in accordance with a requirement imposed by the regulations.]
- (6) The regulations may make provision as to the time and manner of making payment of any charge.
- (7) The regulations shall provide that a highway authority may reduce the amount, or waive payment, of a [<sup>F6</sup>charge -
- (a) in any particular case,
  - (b) in such classes of case as they may decide or as may be prescribed, or
  - (c) in all cases or in all cases other than a particular case or such class of case as they may decide or as may be prescribed.]

- <sup>F7</sup>[(7A) The regulations may make provision as to—

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- (a) the application by local highway authorities of sums paid by way of charges, and
  - (b) the keeping of accounts, and the preparation and publication of statements of account, relating to sums paid by way of charges.
- (7B) The regulations may create in respect of any failure to give a notice required by the regulations a criminal offence triable summarily and punishable with a fine not exceeding [<sup>F8</sup>level 4] on the standard scale.]
- (8) The first regulations for the purposes of this section shall not be made unless a draft of them has been laid before and approved by a resolution of each House of Parliament; subsequent regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.

#### Textual Amendments

- F1** S. 74(2A) inserted (1.2.2001 subject to transitional provision and saving in Sch. 2 Pt. II of the commencing S.I.) by 2000 c. 38, s. 256(2); S.I. 2001/57, art. 3, Sch. 2 Pt. I, (as amended by S.I. 2001/115, art. 2(5))
- F2** Words in s. 74(3) substituted (1.2.2001 subject to transitional provision and saving in Sch. 2 Pt. II of the commencing S.I.) by 2000 c. 38, s. 256(3)(a); S.I. 2001/57, art. 3, Sch. 2 Pt. I (as amended by S.I. 2001/115, art. 2(5))
- F3** Words in s. 74(3) substituted (1.2.2001 subject to transitional provision and saving in Sch. 2 Pt. II of the commencing S.I.) by 2000 c. 38, s. 256(3)(b); S.I. 2001/57, art. 3, Sch. 2 Pt. I (as amended by S.I. 2001/115, art. 2(5))
- F4** Words in s. 74(4) substituted (1.2.2001 subject to transitional provision and saving in Sch. 2 Pt. II of the commencing S.I.) by 2000 c. 38, s. 256(4); S.I. 2001/57, art. 3, Sch. 2 Pt. I (as amended by S.I. 2001/115, art. 2(5))
- F5** S. 74(5A)-(5C) inserted (1.2.2001 subject to transitional provision and saving in Sch. 2 Pt. II of the commencing S.I.) by 2000 c. 38, s. 256(5); S.I. 2001/57, art. 3, Sch. 2 Pt. I (as amended by S.I. 2001/115, art. 2(5))
- F6** Words in s. 74(7) substituted (1.2.2001 subject to transitional provision and saving in Sch. 2 Pt. II of the commencing S.I.) by 2000 c. 38, s. 256(6); S.I. 2001/57, art. 3, Sch. 2 Pt. I (as amended by S.I. 2001/115, art. 2(5))
- F7** S. 74(7A)(7B) inserted (1.2.2001 subject to transitional provision and saving in Sch. 2 Pt. II of the commencing S.I.) by 2000 c. 38, s. 256(7); S.I. 2001/57, art. 3 Sch. 2 Pt. I (as amended by S.I. 2001/115, art. 2(5))
- F8** Words in s. 74(7B) substituted (4.10.2004 for E.) by Traffic Management Act 2004 (c. 18), ss. 40(4), 99(1); S.I. 2004/2380, art. 2(d)(iii) (with art. 3)

#### Modifications etc. (not altering text)

- C1** Pt. 3 modified (11.2.2005) by The Merseytram (Liverpool City Centre to Kirkby) Order 2005 (S.I. 2005/120), arts. 1, 4(1)(2) (with arts. 65, 66)

#### [74A] <sup>F9</sup>Charge determined by reference to duration of works.

- (1) The Secretary of State may make provision by regulations requiring an undertaker executing street works in a maintainable highway to pay to the highway authority a charge determined, in the prescribed manner, by reference to the duration of the works.

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- (2) The regulations shall not require charges to be paid to a local highway authority unless the Secretary of State has approved it for the purposes of the regulations by order made by statutory instrument.
- (3) The regulations may prescribe exemptions from the requirement to pay charges.
- (4) The regulations may prescribe different rates of charge according to—
  - (a) the extent to which the surface of the highway is affected by the works,
  - (b) the place and time at which the works are executed, and
  - (c) such other factors as appear to the Secretary of State to be relevant.
- (5) The regulations may—
  - (a) prescribe more than one rate of charge in respect of the same description of works, and
  - (b) provide that charges are to be paid in respect of any works of that description at the rate which appears to the highway authority to be appropriate in relation to those works.
- (6) The regulations may make provision for the determination of the duration of works for the purposes of the regulations.
- (7) And they may, in particular, make provision for works to be treated as beginning or ending on the giving of, or as stated in, a notice given by the undertaker to the highway authority, in the prescribed manner, in accordance with a requirement imposed by the regulations.
- (8) The regulations may make provision as to the time and manner of making payment of charges.
- (9) The regulations shall provide that a highway authority may reduce the amount, or waive payment, of a charge—
  - (a) in any particular case,
  - (b) in such classes of case as they may decide or as may be prescribed, or
  - (c) in all cases or in all cases other than a particular case or such class of case as they may decide or as may be prescribed.
- (10) The regulations may make provision as to—
  - (a) the application by local highway authorities of sums paid by way of charges, and
  - (b) the keeping of accounts, and the preparation and publication of statements of account, relating to sums paid by way of charges.
- (11) The regulations may create in respect of any failure to give a notice required by the regulations a criminal offence triable summarily and punishable with a fine not exceeding [<sup>F10</sup>level 4] on the standard scale.
- (12) The regulations may require disputes of any prescribed description to be referred to an arbitrator appointed in accordance with the regulations.
- (13) The first regulations under this section shall not be made unless a draft of them has been laid before and approved by a resolution of each House of Parliament; subsequent regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.]

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#### Textual Amendments

- F9** Ss. 74A, 74B inserted (1.2.2001 subject to transitional provision and saving in Sch. 2 Pt. II of the commencing S.I.) by 2000 c. 38, s. 255(1); S.I. 2001/57, art. 3, Sch. 2 Pt. I (as amended by S.I. 2001/115, art. 2(5))
- F10** Words in s. 74A(11) substituted (4.10.2004 for E., 26.11.2007 for W.) by Traffic Management Act 2004 (c. 18), ss. 40(4), 99(1); S.I. 2004/2380, art. 2(d)(iii) (with art. 3); S.I. 2007/3174, art. 2, Sch. (with art. 4)

#### <sup>F11</sup>74B Regulations under sections 74 and 74A.

Nothing shall be taken to prevent the imposition of charges by both regulations under sections 74 and regulations under section 74A in respect of the execution of the same works at the same time.

#### Textual Amendments

- F11** Ss. 74A, 74B inserted (1.2.2001 subject to transitional provision and saving in Sch. 2 Pt. II of the commencing S.I.) by 2000 c. 38, s. 255(1); S.I. 2001/57, art. 3, Sch. 2 Pt. I (as amended by S.I. 2001/115, art. 2(5))

#### 75 Inspection fees.

- (1) An undertaker executing street works shall, subject to the provisions of any scheme under this section, pay to the street authority the prescribed fee in respect of each inspection of the works carried out by the authority.
- (2) Different fees may be prescribed according to the nature or extent of the excavation or other works, the place where they are executed and such other factors as appear to the Secretary of State to be relevant.
- (3) The Secretary of State may by regulations make a scheme under which undertakers pay the prescribed fee only in respect of such proportion or number of excavations or other works as may be determined in accordance with the scheme.
- (4) The scheme may make provision—
  - (a) as to the periods and areas by reference to which the proportion or number is to be determined, and
  - (b) as to the intervals at which an account is to be struck between an undertaker and a street authority and any necessary payment or repayment made;and different provision may be made for different descriptions of undertaker and different descriptions of street authority.
- (5) Nothing in this section applies in relation to inspections in respect of which the undertaker is obliged to bear the cost under section 72(2) (inspections consequent on his failure to comply with his duties as to reinstatement).

#### Modifications etc. (not altering text)

- C2** Pt. 3 modified (2.4.2004) by The Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 (S.I. 2004/757), arts. 1, 3(1)

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- C3** S. 75 applied (with modifications) (11.11.1996) by S.I. 1996/2714, **art. 4(2)(3)**  
 S. 75 applied (27.8.1998) by S.I. 1998/1936, **art. 4(3)**  
 S. 75 applied (21.5.1997) by S.I. 1997/1266, **art. 5(2)(3)**  
 S. 75: functions of a local authority made exercisable by, or by employees of, such person as may be authorised in that behalf by the local highway authority whose function it is (23.7.1999) by S.I. 1999/2106, **art. 2, Sch. 2 para. 1(n)**  
 S. 75 applied (with modifications) (24.7.2001) by S.I. 2001/3627, **art. 4(3)(4)**
- C4** S. 75 applied (with modifications) (30.4.2002) by The Docklands Light Railway (Silvertown and London City Airport Extension) Order 2002 (S.I. 2002/1066), **art. 3(3)(4)**;  
 S. 75 applied (with modifications) (31.5.2002) by The Greater Manchester (Light Rapid Transit System) (Trafford Depot) Order 2002 (S.I. 2002/1327), **art. 3(3)**
- C5** S. 75 applied (with modifications) (2.4.2004) by The Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 (S.I. 2004/757), **arts. 1, 3(3)(4)**
- C6** S. 75 applied (with modifications) (11.2.2005) by The Merseytram (Liverpool City Centre to Kirkby) Order 2005 (S.I. 2005/120), **arts. 1, 4(4)(5)** (with arts. 65, 66)

## 76 Liability for cost of temporary traffic regulation.

- (1) Where by reason of street works—
- (a) the traffic authority makes an order or issues a notice under section 14 of the <sup>MI</sup>Road Traffic Regulation Act 1984 (temporary prohibition or restriction of traffic), or
  - (b) a concessionaire issues a notice under that section by virtue of section 3(4) of this Act,
- the authority or concessionaire may recover from the undertaker the whole of the costs incurred by them in connection with or in consequence of the order or notice.
- (2) Those costs shall be taken to include, in particular, the cost to the authority or concessionaire—
- (a) of complying with any requirement to notify the public of any matter in connection with the making, issuing or operation of the order or notice, and
  - (b) of providing traffic signs in connection with the prohibition or restriction of traffic by the order or notice.

### Modifications etc. (not altering text)

- C7** S. 76 applied (27.8.1998) by S.I. 1998/1936, **art. 4(3)**  
 S. 76 applied (13.1.1999) by S.I. 1998/3269, **art. 4(2)(3)**  
 S. 76 applied (21.5.1997) by S.I. 1997/1266, **art. 5(2)(3)**  
 S. 76 applied (10.2.1997) by S.I. 1997/264, **art. 8(6)(7)**  
 S. 76 applied (with modifications) (30.4.1999) by S.I. 1999/1306, **art. 8(4)(5)**  
 S. 76 applied (with modifications) (21.7.1999) by S.I. 1999/2129, **art. 8(5)(6)**  
 S. 76 applied (with modifications) (20.8.1999) by S.I. 1999/2336, **art. 9(5)(6)(8)**  
 S. 76 applied (with modifications) (23.8.1999) by S.I. 1999/2981, **art. 7(5)(6)**  
 S. 76 applied (with modifications) (11.11.1996) by S.I. 1996/2714, **art. 4(2)(3)**  
 S. 76 applied (4.4.1996) by S.I. 1996/937, **art. 8(4)(5)**  
 S. 76 applied (with modifications) (29.3.2001) by S.I. 2001/1348, **art. 21(3)-(5)**  
 S. 76 applied (with modifications) (29.3.2001) by S.I. 2001/1347, **art. 3(3)**  
 S. 76 applied (with modifications) (18.7.2001) by S.I. 2001/2870, **art. 10(6)**  
 S. 76 applied (with modifications) (24.7.2001) by S.I. 2001/3627, **art. 4(3)(4)**  
 S. 76 applied (with modifications) (9.11.2001) by S.I. 2001/3682, **art. 8(6)**

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- C8** S. 76 applied (with modifications) (14.3.2002) by [The Chester Guided Busway Order 2002 \(S.I. 2002/412\)](#), [art. 9\(4\)\(5\)](#) (with art. 38)  
S. 76 applied (with modifications) (30.4.2002) by [The Docklands Light Railway \(Silvertown and London City Airport Extension\) Order 2002 \(S.I. 2002/1066\)](#), [art. 3\(3\)\(4\)](#);  
S. 76 applied (with modifications) (31.5.2002) by [The Greater Manchester \(Light Rapid Transit System\) \(Trafford Depot\) Order 2002 \(S.I. 2002/1327\)](#), [art. 3\(3\)](#)
- C9** S. 76 applied (with modifications) (28.4.2003) by [The Network Rail \(West Coast Main Line\) Order 2003 \(S.I. 2003/1075\)](#), arts. 1, [13\(6\)\(7\)\(8\)](#) (with art. 40)
- C10** S. 76 applied (with modifications) (2.4.2004) by [The Docklands Light Railway \(Woolwich Arsenal Extension\) Order 2004 \(S.I. 2004/757\)](#), arts. 1, [3\(3\)\(4\)](#)
- C11** S. 76 applied (with modifications) (19.11.2004) by [The Scarweather Sands Offshore Wind Farm Order 2004 \(S.I. 2004/3054\)](#), arts. 1, [6\(4\)\(5\)](#) (with art. 38)
- C12** S. 76 applied (with modifications) (11.2.2005) by [The Merseytram \(Liverpool City Centre to Kirkby\) Order 2005 \(S.I. 2005/120\)](#), arts. 1, [4\(4\)\(5\)](#) (with arts. 65, 66)

#### Marginal Citations

- M1** 1984 c. 27.

## 77 Liability for cost of use of alternative route.

- (1) Where by reason of street works the use of a highway is restricted or prohibited and the diverted traffic uses as an alternative route a highway of a lower classification, the undertaker shall indemnify the highway authority for the latter highway in respect of costs reasonably incurred by them—
- in strengthening the highway, so far as that is done with a view to and is necessary for the purposes of its use by the diverted traffic; or
  - in making good any damage to the highway occurring in consequence of the use by it of the diverted traffic.
- (2) For this purpose the order of classification of highways, from higher to lower, is as follows:

1	Trunk roads.
2	Principal roads.
3	Other classified roads.
4	Other highways.

As to principal and other classified roads, see sections 12 and 13 of the <sup>M2</sup>Highways Act 1980.

#### Modifications etc. (not altering text)

- C13** S. 77 applied (4.4.1996) by [S.I. 1996/937](#), [art. 8\(4\)\(5\)](#)  
S. 77 applied (13.1.99) by [S.I. 1998/3269](#), [art. 4\(2\)\(3\)](#)  
S. 77 applied (27.8.98) by [S.I. 1998/1936](#), [art. 4\(3\)](#)  
S. 77 applied (21.5.1997) by [S.I. 1997/1266](#), [art. 5\(2\)\(3\)](#)  
S. 77 applied (10.2.1997) by [S.I. 1996/264](#), [art. 8\(6\)\(7\)](#)  
S. 77 applied (with modifications) (30.4.1999) by [S.I. 1999/1306](#), [art. 8\(4\)\(5\)](#)  
[S. 77](#) applied (with modifications) (21.7.1999) by [S.I. 1999/2129](#), [art. 8\(5\)\(6\)](#)  
[S. 77](#) applied (with modifications) (20.8.1999) by [S.I. 1999/2336](#), [art. 9\(5\)\(6\)\(8\)](#)

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- S. 77 applied (with modifications) (23.8.1999) by S.I. 1999/2981, **art. 7(5)(6)**  
 S. 77 applied modifications (11.11.1996) by S.I. 1996/2714, **art. 4(2)(3)**  
 S. 77 applied (with modifications) (29.3.2001) by S.I. 2001/1348, **art. 21(3)-(5)**  
 S. 77 applied (with modifications) (29.3.2001) by S.I. 2001/1347, **art. 3(3)**  
 S. 77 applied (with modifications) (18.7.2001) by S.I. 2001/2870, **art. 10(6)**  
 S. 77 applied (with modifications) (24.7.2001) by S.I. 2001/3627, **art. 4(3)(4)**  
 S. 77 applied (with modifications) (9.11.2001) by S.I. 2001/3682, **art. 8(6)**  
**C14** S. 77 applied (with modifications) (14.3.2002) by The Chester Guided Busway Order 2002 (S.I. 2002/412), **art. 9(4)(5)** (with art. 38);  
 S. 77 applied (with modifications) (30.4.2002) by The Docklands Light Railway (Silvertown and London City Airport Extension) Order 2002 (S.I. 2002/1066), **art. 3(3)(4)**;  
 S. 77 applied (with modifications) (31.5.2002) by The Greater Manchester (Light Rapid Transit System) (Trafford Depot) Order 2002 (S.I. 2002/1327), **art. 3(3)**  
**C15** S. 77 applied (with modifications) (28.4.2003) by The Network Rail (West Coast Main Line) Order 2003 (S.I. 2003/1075), arts. 1, **13(6)(7)(8)** (with art. 40)  
**C16** S. 77 applied (with modifications) (2.4.2004) by The Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 (S.I. 2004/757), arts. 1, **3(3)(4)**  
**C17** S. 77 applied (with modifications) (19.11.2004) by The Scarweather Sands Offshore Wind Farm Order 2004 (S.I. 2004/3054), arts. 1, **6(4)(5)** (with art. 38)  
**C18** S. 77 applied (with modifications) (11.2.2005) by The Merseytram (Liverpool City Centre to Kirkby) Order 2005 (S.I. 2005/120), arts. 1, **4(4)(5)** (with arts. 65, 66)

#### **Marginal Citations**

**M2** 1980 c. 66.

## **78 Contributions to costs of making good long-term damage.**

- (1) The Secretary of State may make provision by regulations requiring an undertaker executing street works to contribute to the costs incurred or likely to be incurred by the street authority or, in the case of a road subject to a concession within the meaning of Part I of this Act, by the concessionaire, in works of reconstruction or re-surfacing of the street.
- (2) The regulations may provide—
  - (a) for a contribution to the cost of particular remedial works, or
  - (b) for a general contribution calculated in such manner as may be prescribed.
- (3) In the former case the regulations may contain provision for apportioning the liability where the need for the remedial works is attributable to works executed by more than one person.
- (4) In the latter case the regulations may provide for the amount of the contribution to vary according to the nature of the street, the description and extent of the works and such other factors as appear to the Secretary of State to be relevant.
- (5) The first regulations under this section shall not be made unless a draft of them has been laid before and approved by a resolution of each House of Parliament; subsequent regulations shall be subject to annulment in pursuance of a resolution of either House of Parliament.



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