WELSH STATUTORY INSTRUMENTS

2009 No. 1268 (W.115)

HIGHWAYS, WALES

The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (Wales) Regulations 2009

Made - - - -	*19 May 2009*
Laid before the National Assembly for Wales - -	*22 April 2009*
Coming into force - -	*1 June 2009*

The Welsh Ministers, in exercise of the powers conferred upon the Secretary of State by sections 74, 97 and 104(1) and (3) of the New Roads and Street Works Act 1991(**1**), subsequently transferred to the National Assembly for Wales, and now vested in them (**2**), make the following Regulations:

Title, commencement and application

1. The title of these Regulations is the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (Wales) Regulations 2009. They come into force on 1 June 2009 and apply in relation to Wales.

Interpretation

2. In these Regulations—

"the 1984 Act" ("*Deddf 1984*") means the Road Traffic Regulation Act 1984(**3**);

"the 1991 Act" ("*Deddf 1991*") means the New Roads and Street Works Act 1991;

(**1**) 1991 c. 22. Section 74 was amended by the Transport Act 2000 (c. 38), section 256, Schedule 31, Part V and by the Traffic Management Act 2004 (c. 18), sections 40(4) and 52.

(**2**) The functions of the Secretary of State under sections 74, 97 and 104 are, so far as exercisable in relation to Wales, vested in the Welsh Ministers. Those functions were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I.1999/672), article 2, Schedule 1. By virtue of paragraphs 30 and 32 of Schedule 11 to the Government of Wales Act 2006 (c. 32), they were transferred to the Welsh Ministers.

(**3**) 1984 c. 27. Sections 1,6 and 9 were amended by the New Roads and Street Works Act 1991 (c. 22), section 168 and Schedule 8, paragraphs 17, 21 and 23 and modified by the Tramcars and Trolley Vehicles (Modification of Enactments) Regulations 1992 (S.I. 1992/1217) ("the Tramcars Regulations"). Sections 1 and 6 were also amended by the Environment Act 1995 (c. 25), section 120 and Schedule 22, paragraph 36. Section 1 was also amended by the Transport Act 2000, section 161 and Schedule 11, paragraphs 6 and 7. Sections 6 and 9 were amended by the Local Government Act 1985 (c. 51), section 8 and Schedule 5, paragraph 4 and section 9 was also amended by the Road Traffic Act 1991 (c. 27), section 48 and Schedule 4, paragraph 24. Section 14 was substituted by the Road Traffic (Temporary Restrictions) Act 1991 (c. 26), section 1(1) and Schedule 1 and modified by the Tramcars Regulations.

"the 1992 Regulations" ("*Rheoliadau 1992*") means the Street Works (Registers, Notices, Directions and Designations) Regulations 1992(**4**);

"the 2004 Act" ("*Deddf 2004*") means the Traffic Management Act 2004(**5**);

"address" ("*cyfeiriad*"), in relation to a particular method for transmitting an electronic communication, means any number or address used for the purposes of such method of transmission;

"bridleway" ("*llwybr ceffylau*"), "footpath" ("*llwybr troed*") and "footway" ("*troedffordd*") have the meaning given in section 329(1) of the Highways Act 1980(**6**);

"day" ("*diwrnod*") means a working day;

"electronic communication" ("*cyfathrebiad electronig*") has the meaning given in section 15(1) of the Electronic Communications Act 2000(**7**);

"immediate works" ("*gwaith di-oed*") means urgent works or emergency works(**8**);

"limited designation" ("*dynodiad cyfyngedig*") means a designation in accordance with regulation 16(3) of the Street Works (Registers, Notices, Directions and Designations) (Wales) (No.2) Regulations 2008(**9**), for particular times or on particular dates;

"major works" ("*gwaith mawr*") means—

(a) street works which have been identified in the annual operating programme of an undertaker, or which, though not specifically identified in such programme, would normally be planned or known about at least six months in advance of the date proposed for the works;

(b) street works, other than immediate works, where—

(i) the street authority has indicated to an undertaker, or

(ii) the undertaker considers,

that an order under section 14 of the 1984 Act (temporary prohibition or restriction on roads) is required; or

(c) street works, other than immediate works, the planned duration of which exceeds ten days;

"minor works" ("*mân waith*") means, save as provided in regulation 8(8), street works, other than immediate works or major works, the planned duration of which does not exceed three days;

"pedestrian planning order" ("*gorchymyn cynllunio ar gyfer cerddwyr*") means an order made under section 249(2) of the Town and Country Planning Act 1990(**10**);

"permit" ("*trwydded*") and "permit scheme" ("*cynllun trwyddedau*") are to be construed in accordance with section 32 of the 2004 Act;

"Permit Authority" ("*Awdurdod Trwyddedau*") means—

(a) a local highway authority in respect of which an order has been made under section 34(4) of the 2004 Act; or

(**4**) S.I. 1992/2985; as amended by S.I. 1995/990 and 2128 and 1999/1049. The 1992 Regulations were dis-applied as respects Wales by the Street Works (Registers, Notices, Directions and Designations) (Wales) (No. 2) Regulations 2008 (S.I. 2008/540 (W.52)), regulation 2, subject to transitional arrangements contained in regulation 19.
(**5**) 2004 c. 18.
(**6**) 1980 c. 66.
(**7**) 2000 c. 7. Section 15(1) was amended by the Communications Act 2003 (c. 21), section 406(1) and Schedule 17, paragraph 158.
(**8**) *See* section 52 of the New Roads and Street Works Act 1991 (c. 22) for the definition of "emergency works".
(**9**) S.I. 2008/540 (W.52).
(**10**) 1990 c. 8. Section 249(2) was amended by the Greater London Authority Act 1999 (c. 29), section 270, Schedule 22, paragraph 5.

(b) the Welsh Ministers, as a highway authority, in respect of whom an order has been made under section 35(2) of that Act,

giving effect to a permit scheme;

"prescribed period" ("*cyfnod rhagnodedig*") means the period prescribed by regulation 6;

"remedial works" ("*gwaith adfer*") are works carried out under section 72(3) of the 1991 Act;

"road category" ("*categori ffordd*") means one of the road categories specified in paragraph 1.3.1 of Chapter S1 of the code of practice entitled "Specification for the Reinstatement of Openings in Highways" dated November 2006(**11**)and approved by the Welsh Ministers on 7 November 2006, as revised or re-issued from time to time;

"standard axle" ("*echel safonol*") means an axle which exerts a force of 80 kilo Newtons;

"standard works" ("*gwaith safonol*") means, save as provided in regulation 8(8), street works, other than immediate works or major works, the planned duration of which exceeds three days but does not exceed ten days;

"statutory undertaker" ("*ymgymerydd statudol*") means a person entitled by virtue of a statutory right to carry out street works;

"the Technical Specification" ("*y Fanyleb Dechnegol*") means the Technical Specification for the Electronic Transfer of Notifications produced by the Department for Transport and dated December 2008, as revised or re-issued from time to time;(**12**)

"traffic order" ("*gorchymyn traffig*") means an order made under section 1 or 9 of the 1984 Act;

"traffic-sensitive street" ("*stryd sydd yn sensitif i draffig*") means a street designated as traffic-sensitive under section 64 of the 1991 Act;

"traffic-sensitive time" ("*adeg sydd yn sensitif i draffig*"), in relation to a traffic-sensitive street, means—

(a) the times or dates specified in the case of a limited designation; and

(b) any time in any other case; and

"urgent works" ("*gwaith brys*")

(a) means street works, other than emergency works, whose execution at the time when they are executed is required (or which the person responsible for the works believes on reasonable grounds to be required)—

(i) to prevent or put an end to an unplanned interruption of any supply or service provided by an undertaker;

(ii) to avoid substantial loss to an undertaker in relation to an existing service; or

(iii) to reconnect supplies or services where an undertaker would be under a civil or criminal liability if the reconnection is delayed until after the expiry of the appropriate notice period; and

(b) includes works which cannot reasonably be severed from such works.

(**11**) Available at http://wales.gov.uk/legislation/subordinate/nonsi/highwwales/2006/SpecificationReinstatementHighwa?lang=en

(**12**) This is available at www.dft.gov.uk

Transitional arrangements

3. These Regulations do not apply to street works in Wales in respect of which an undertaker has given notice under section 54(1), 55(1) or 57 of the 1991 Act before the date on which they come into force(**13**).

Application of Regulations

4. These Regulations apply to every maintainable highway, other than a footpath, a bridleway, a highway in relation to which a pedestrian planning order is in force and a highway whose use by vehicular traffic is prohibited by a traffic order, unless that prohibition is in force only at particular times.

Notices

5.—(1) Subject to paragraph (2), an undertaker executing street works in a highway to which these Regulations apply must give the highway authority for that highway, notice in writing of the beginning of those works specifying the street in which the works are to be carried out ("actual start of works notice") not later than the end of the next day following the date on which the works begin.

(2) Where works are executed under a permit granted by a Permit Authority in a traffic-sensitive street or in a street in road category 0, 1 or 2 which is not a traffic-sensitive street, the period within which the actual start of works notice must be given in accordance with paragraph (1) will be the period applicable by virtue of paragraph 16.7 of the Code of Practice for Permits dated June 2009(**14**), as revised or re-issued from time to time.

(3) When an undertaker has—

(a) completed interim reinstatement of a highway;

(b) removed—

(i) all signing, lighting and guarding, and

(ii) all remaining spoil, unused materials and other plant; and

(c) returned the highway fully to public use,

that undertaker must give the highway authority notice that this has been done ("works clear notice") not later than the end of the next day following the date on which the highway was returned fully to public use.

(4) When an undertaker has—

(a) completed permanent reinstatement of a highway;

(b) removed—

(i) all signing, lighting and guarding, and

(ii) all remaining spoil, unused materials and other plant; and

(c) returned the highway fully to public use,

that undertaker must give the highway authority notice that this has been done ("works closed notice") not later than the end of the next day following the date on which the highway was returned fully to public use.

(**13**) Prior to these Regulations coming into force, the provisions of the Street Works (Registers, Notices, Directions and Designations (Wales) (No .2) Regulations 2008 (S.I. 2008/540) apply.
(**14**) Web address to follow.

Prescribed period

6. In relation to an undertaker executing street works in a highway to which these Regulations apply, the period prescribed under section 74(1)(a) of the 1991 Act will be two days, starting on the date on which the works begin.

Duration of works

7. For the purposes of these Regulations, the duration of street works will only come to an end when the undertaker has—

(a) completed interim reinstatement, or as the case may be permanent reinstatement, of a highway;

(b) removed—

(i) all signing, lighting and guarding, and

(ii) all remaining spoil, unused materials and other plant; and

(c) returned the highway fully to public use.

Prescribed charges

8.—(1) Subject to paragraphs (2), (12) and (13), an undertaker executing street works in a highway to which these Regulations apply must pay the highway authority a charge to be determined in accordance with paragraphs (3) to (11).

(2) Paragraph (1) does not apply to—

(a) works—

(i) in a street which is not a traffic-sensitive street,

(ii) in the footway of a traffic-sensitive street at a traffic-sensitive time, or

(iii) in a traffic-sensitive street, other than at a traffic-sensitive time,

if the works do not involve breaking up the street or tunnelling or boring under it;

(b) works consisting only of the creation of holes of less than 3 centimetres in diameter, for investigatory purposes;

(c) replacing poles, lamp columns or signs in the same location; or

(d) pole testing.

(3) Subject to paragraphs (5) and (9), the charge will be of an amount calculated in accordance with paragraph (4) and is payable for each day, or part of a day, by which the duration of the works exceeds the longer of—

(a) the prescribed period, or

(b) a reasonable period(**15**).

(4) In relation to street works of a category set out in column 3 of Table 1, executed in a street of a description referred to in column 2 in relation to that category, the amount of the charge will be the amount set out in column 4.

(**15**) "A reasonable period" is to be construed in accordance with section 74(2) of the New Roads and Street Works Act 1991 (c. 22).