

**CONSULTATION RESPONSE PRO-FORMA****Consultation on the proposed Amendment to the Charges for  
Unreasonably Prolonged Occupation of the Highway****PART 1 - Information about you**

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Company Name or Organisation (if applicable)	The National Joint Utilities Group Ltd			
Please tick one box from the list below that best describes you /your company or organisation.				
<input type="checkbox"/>	Small to Medium Enterprise (up to 50 employees)			
<input type="checkbox"/>	Large Company			
<input type="checkbox"/>	Utility Company			
	<input type="checkbox"/> Water	<input type="checkbox"/> Gas	<input type="checkbox"/> Electricity	<input type="checkbox"/> Telecoms
<input checked="" type="checkbox"/>	Representative Organisation			
<input type="checkbox"/>	Trade Union			
<input type="checkbox"/>	Interest Group			
<input type="checkbox"/>	Local Government			
	<input type="checkbox"/> County Council	<input type="checkbox"/> London Borough	<input type="checkbox"/> Metropolitan Borough Council	<input type="checkbox"/> Unitary
<input type="checkbox"/>	Central Government			
<input type="checkbox"/>	Emergency Service			
	<input type="checkbox"/> Ambulance	<input type="checkbox"/> Fire and Rescue	<input type="checkbox"/> Police	<input type="checkbox"/> Other

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<input type="checkbox"/>	Member of the public
<input type="checkbox"/>	Other (please describe):
If you are responding on behalf of an organisation or interest group how many members do you have and how did you obtain the views of your members: Through internal working group consultation	
If you would like your response or personal details to be treated confidentially please explain why:	

**PART 2 - Your Comments**

With a new Government in office, **the time is right to take a fresh look at what is most effective way to manage the disruption** to road users that is the unfortunate consequence of works in the carriageway.

To be successful, any approach to reducing disruption to road users from works in carriageway must start by recognising that both utilities and local authorities carry out works in the carriageway, and are responsible for about the same proportion of disruption (about 5% of the total disruption to road users each). Targeting measures just at utilities (or just at local authorities) simply will not solve the problem.

Our strong view is that it is only by utilities and local authorities working together through better co-ordination, communication and co-operation that significant progress will be made. The key to this is the Network Management Duty for local authorities to co-ordinate all works. To make this work effectively, all planned works should be required to be registered in advance – whether they are carried out by local authorities or utilities – and central Government should seek to spread best practice in carrying out the Network Management Duty.

Instead of this co-operative, holistic, approach, the previous Government proposed measures targeted solely at utilities, such as this proposal for excessive and unjustified increases to overrun charges. Rather than applying ever higher charges to utilities without benefit to road users, we call on the new Government to review the whole approach to managing disruption to road users and focus on encouraging utilities and local authorities to work together to the benefit of all road users.

**Question 1**

<b>Q1: Do you consider that the proposed level of overrun charges correctly reflects the impact that works can have on road users? If not what do you consider an appropriate level, and what evidence do you have to support an alternative level of charges that reflects the impact on road users?</b>			
Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
<b>Please explain your view</b>			
<p>NJUG believes the increases proposed by the previous Government to be excessive and not reflective of the impact utility works have on road users, especially when consideration is given to the essential nature of safe and reliable utility supplies.</p> <p><b>Lack of justification for the increase</b></p> <p>NJUG believes the current level of overrun charges provides a sufficient incentive for utilities to operate street works efficiently and has successfully delivered significant reductions in agreed works durations since its introduction in 2001. There is no published data available that justifies a further increase in overrun charges before the impacts of the current charges have been properly assessed in relation to traffic volumes and journey times.</p> <p>The rationale put forward for the increases is the assertion that current charges do not fully reflect the impact of works on traffic-sensitive streets, and the consultation repeatedly refers to congestion and disruption to traffic on traffic-sensitive streets (for examples Impact Assessment</p>			

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sections 10, 24 and 30). However, the proposals treat works that take place off the carriageway in the same way as works that are in the carriageway – even though any disruption caused by works off the carriageway has no effect upon congestion whatsoever. Therefore if it is the impact on traffic-sensitive streets that is the justification for the increase then there is a converse argument that charges for minor roads (category 3 & 4) and footways should be reduced or even removed altogether as the disruptive effect to these examples is minimal.

The response to the consultation and amendments to regulations and charges must address this and such works should be excluded from any increase. In addition, the Impact assessment must be reviewed and recalculated to reflect this.

### **Message required from Government**

Section 3.5 of the consultation indicates that the Department “expects” the full charges only to apply where significant disruption affects road users, and section 3.6 notes that the higher maximum charges are not intended to generate additional revenue for highway authorities. It would be helpful for the Government to confirm that as the stated purpose of the charges is to be a tool to encourage the right behaviour and minimise disruption, the ideal position – to which all parties should be working – would be for no charges at all to need to be levied, as works would be carried out with the agreed timescales, safely and to the required standard. This would provide a clear signal to all parties of the objectives of the charges, and would allay any concerns that raising revenue might be an objective of charges.

### **Acting reasonably**

The current s74 regulations provide an option to charge a one off payment for a single cone left on site. This has caused a great many problems for authorities when a small group of signing, lighting and guarding equipment is left off site and not obstructing the public highway. Does the authority forgo the single cone payment process, charge full s74 charges (noting that the work site is restored to public use) or contact the utility unofficially?

HAUC(UK) / DfT working group discussions prior to the regulations being introduced were based around minimal safety equipment left on site safely located to the side for collection i.e. as distinct from works actually taking place on site and barriers protecting excavations etc. Many authorities take this literally and if there are two cones or a cone and a sign placed safely on the side, they still opt for full s74 charges rather than applying the process to allow speedy removal. This is particularly the case where authorities who have contracted out this functionality and appear more driven by income rather than the disruption caused to the public. It is suggested that should be amended to ‘signs or items of lighting and guarding that do not obstruct the free flow of traffic on the public highway’.

### **Treating all works the same**

Disruption can be caused by any works in the road, regardless of whether the works are utility or local authority works. However, overrun charges are not levied upon local authority works, an imbalance which fails to reflect the impact such works have on road users. Independent research has shown that utilities and local authorities are each responsible for 5% of total congestion.

As a result, if an incentive is needed to promote the right behaviour in relation to utility works, the same incentive is surely needed to promote the right behaviour in relation to local authority works. This would drive the correct behaviour by all and ensure the travelling public benefit from any difference.

### **Current regulations**

Additionally, the use of permits and the existing Noticing regime allow for the imposition of conditions to control the duration, time and location of works and therefore increasing overstay

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charges further will add to already significant costs utilities pay for locating their apparatus in the street and for replacing, repairing or maintaining it.

The previous changes to regulations saw a reduction in the prescribed period to two days. Numerous authorities wrongly now regard this period as the expected duration of works and challenge proposed durations longer than this, without consideration of quality or safety or economic use of resources or more importantly the described works. This has increased the number of disagreements, calls, emails and overall administrative burden to both utilities and authorities. The duration and description of the prescribed period needs amending to make it clear that it is an arbitrary timescale unrelated to works durations.

### Conclusion

Little evidence is provided in the consultation to justify the substantial increase in charges. Given the dramatic increase, there should be clear evidence that the proposal to increase charges so substantially will have any benefit.

Given the apparent lack of an information base, NJUG suggests that if the increases are implemented, they ONLY apply to strategic routes. This would provide an opportunity to assess the impact of the measures against defined criteria for success.

## Question 2

**Q2: Do you agree that on traffic sensitive streets, the impact of works on traffic flow is the same whatever category of works is taking place? If not why do you think the impact varies by works category?**

Yes	<input type="checkbox"/>	No	<input checked="" type="checkbox"/>
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### Please explain your view

To a degree, NJUG agrees with this statement however, the impact of works on traffic flow still varies on traffic-sensitive streets between different types of works relative to the duration of the work (i.e. works category) and that some works take up larger areas of the highway.

Equally, the impact of works depends on the method used to undertake them (e.g. minimum-dig techniques reduce both the duration and size of works), and / or the time the works take place. Since the introduction of the London Code of Conduct there has been a significant increase in out of hours working in the capital, which reduces the unfortunate disruption that sometimes arises from essential street works.

Seasonal impacts such as school and Christmas holidays, as well as tourist area effects, are all also managed by statutory undertakers' in cooperation with highway authorities to minimise disruption.

## Question 3

**Q3: For immediate works, do you consider an alternative overrun charge for immediate works on traffic sensitive streets is required? If so what level would**

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<b>you consider appropriate to reflect the impact on road users and what evidence do you have to support this?</b>			
Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
<b>Please explain your view</b>			
<p>Given that immediate works are only undertaken in urgent or emergency situations and cannot be planned in advance they have no initial duration estimate. Whilst some disruption may occur as a result of immediate works, these operations are undertaken for reasons of either safety (which must always be the priority) or to prevent loss of / restore service to customers. Since road users are also the utility customers our members supply, NJUG feels that some disruption, whether it is on the highway or to a utility supply, is unfortunately a side effect of immediate works for which utilities should not be penalised, as long as the operations are delivered within reasonable agreed timeframes and in an efficient manner.</p> <p>As immediate works are unavoidable and cannot be planned they should be exempt from charging altogether. Only truly severable works that follow-on after the immediacy has been completed (e.g.: reinstatement undertaken as a second pass) should be eligible for overrun charging.</p> <p>If this approach is not taken, then where charges are imposed for immediate works in traffic sensitive streets, then the charges should only be levied on those works that disrupt the flow of traffic in the carriageway.</p>			

**Question 4**

<b>Q4: Do you agree that Chapter 10 of the Co-ordination Code of Practice should be revised as proposed to encourage greater use of the discretion to waive or reduce overrun charges, when the impact on road users is not significant?</b>			
Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
<b>Please explain your view</b>			
<p>NJUG supports the encouragement of the right behaviour, and believes that this should be driven from both a utility and highway authority perspective.</p> <p>Utility works are essential and only ever undertaken for four primary reasons: safety, security of supply, to connect or upgrade customers' supplies, or to divert apparatus to facilitate major transport or urban regeneration projects (such as Crossrail, the 2012 Olympics and Paralympics, tram projects, or new urban and housing developments).</p> <p><b>Message from Government</b></p> <p>It would be helpful for the Government to confirm in the Code of Practice that as the stated purpose of the charges is to be a tool to encourage the right behaviour and minimise disruption, the ideal position – to which all parties should be working – would be for <b>no</b> charges at all to need to be levied, as works would be carried out with the agreed timescales, safely and to the required standard. This would provide a clear signal to all parties of the objectives of the charges, and would allay any concerns that raising revenue might be an objective of charges.</p>			

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### Revenue raising / Acting reasonably

Overrun charges must not be used as additional revenue streams for local authorities and therefore should not be detailed within their budgets as is currently the case with some authorities. It is essential that Government ensures that the correct behaviours are driven through robust assessment processes, analysing the practices of local authorities as well as utility service providers. Local government must take a reasonable approach to utility street works at all times, given the essential nature of the utility supplies which NJUG's members are responsible for delivering safely and securely. However, utilities must always seek to minimise the disruption that their works sometimes cause and local authorities should work together to plan and co-ordinate works wherever possible.

For example, where unexpected events occur during operations that could not be anticipated, highway authorities must demonstrate a reasonable approach when discussing the required actions necessary from the relevant utility. Similarly, utilities must themselves ensure that the local authorities within which they operate are kept fully up to date on the progress of all works on their network, and that continual and open dialogue is maintained. Only by working together better will disruption be truly reduced on an ongoing basis

Overrun charges should only be levied when the utility or their contractor has demonstrated no effort in completing the operation in question within the agreed time frame, or if they have taken no action to discuss with the authority unexpected developments and how best the utility and authority can together address the new situation.

***For proposed amendments to the Co-ordination Code of Practice, please see the text changes and comments within the attached Annex C document.***

### Question 5

**Q5: If you are responding on behalf of an authority, does your organisation already use the discretion to waive or reduce overrun charges? If so please provide examples of the occasions when this discretion has been used and, where possible, an indication of the range of charge levels imposed and the frequency with which charges have been reduced or waived.**

Yes	<input type="checkbox"/>	No	<input type="checkbox"/>
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**Please explain your view**

Not applicable.

### Question 6

**Q6: What factors would influence the use of discretion by authorities?**

**Please explain your view**

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NJUG believes that the use of discretion by authorities would be influenced if:

- 1) There was a clear signal from Government that as the purpose of the charges is to be a tool to encourage the right behaviour and minimise disruption, the ideal position – to which all parties should be working – would be for **no** charges at all to need to be levied, as works would be carried out with the agreed timescales, safely and to the required standard; and
- 2) Local authorities' practices and use of measures such as overrun charges were assessed / scrutinised by central Government, with an aim of promoting a vision of working together to reduce disruption. The Department for Transport should consider imposing financial penalties on any misuse of measures or undesirable behaviour.

The only way disruption can be reduced further is by **working together better** and through better **co-ordination, communication and co-operation**. If utilities and local authorities work together constructively and establish a strong dialogue, there can be joint planning of planned works, early notification of likely problems which might result in an extension being required, or a flexible attitude and approach to helping authorities restore the road to use – either through flexible or out of hours working or responding swiftly to an authority request.

The alternative, a more confrontational approach, will not produce positive results. Without a clear signal from central Government on what behaviours are desired, there would be concerns that authorities might seek to artificially reduce the timeframes in which works can take place and then charge utility service providers who exceed such times. This could inadvertently drive inappropriate behaviours with operatives 'cutting corners' to complete works within the agreed timescale. Any associated failures in quality will then of course lead to further disruption caused by return visits to remedy the site.

Evidence of proactive management of a reduction in works that are idle should be considered for the waiving of fees. Utilities should and will aim to reduce these instances to minimum levels.

Alternatively, the Scottish model around a **Road Works Commissioner** to scrutinise both utility and local authority works in England, Wales and Northern Ireland should be actively considered. This model has to date worked very effectively in Scotland since implementation in 2007, and was recently endorsed by the Confederation of British Industries (CBI) as a system which could result in improved behaviours and an improved experience for the travelling public.

To ensure the correct use of the regulations the **Department for Transport should monitor the use and misuse of powers by authorities as a performance measure** comparing direct functionality and contracted out functionality. NJUG members see a variety of attitudes across the authority sector, and inappropriate behaviour is evident within some authorities. Many are very responsible and have clear objectives to improve disruption on our roads but some appear to be driven to recover in excess of the cost of their operating procedures perpetuating inappropriate behaviour and the wrong message to the public. There is also a risk that authorities receiving substantial income of this nature will have their budgets reduced and the money spent elsewhere and the net improvement to the public will be nil.

A change that would significantly influence local authorities' behaviour, and focus their attention on working together to reduce disruption, would be for local authorities to have the same incentives for works in the road as utility companies, and to have to pay the same charges for overruns. This would drive the correct behaviour by all and ensure the travelling public benefit.

## **IMPACT ASSESMENT**

**Question 7**

<p><b>Impact Assessment details</b>                  The Impact Assessment drafted by the department details costs and benefits associated with the proposed changes to the code.</p>			
<p><b>Q7: Does the impact assessment identify the main costs and benefits likely to arise from the proposal?</b></p>			
<p><b>Do you disagree with any of the assumptions in the impact assessment?</b></p>			
Yes	<input checked="" type="checkbox"/>	No	<input checked="" type="checkbox"/>
<p><b>Please provide justification supported with data for using alternative assumptions.</b></p>			
<p><b>Q: Does the impact assessment identify the main costs and benefits likely to arise from the proposal?</b> No</p>			
<p><b>Q: Do you disagree with any of the assumptions in the impact assessment?</b>                  Yes</p>			
<p>'Existing levels of charges do not fully reflect the costs imposed by overruns on traffic-sensitive streets' – NJUG would disagree with this statement since the value of the works themselves have not been taken into account, neither has fact that half of all works are carried out on behalf of local authorities. Therefore both the potential total benefits and costs are grossly underestimated.</p>			
<p>The whole focus of the consultation, impact assessment and the previous Minister's opinion is based on the fact that disruption caused on <b>traffic-sensitive roads</b> has a bigger impact on vehicles and that the charges must reflect this. However, many works do not actually encroach upon the carriageway or affect vehicles (many works are wholly in the footpath or verge). These works must be exempt from the increased charges, or from any charges at all as they do not cause disruption.</p>			
<p>NJUG and its members have seen significant increases in the <b>bureaucracy</b> and administrative effort to discuss and agree charges. Not only is this not covered in the impact assessment, but more importantly it distracts trained staff from ensuring the street works process works efficiently for the public. Since charges were introduced, both authorities and utilities have focussed on costs rather than quality. The imposition of such high charges will increase the attention on costs and income again and will not only redirect people to be driven / motivated by this, but put back much of the good cooperative work the HAUC community is currently carrying out to improve street works in the UK.</p>			
<p>There is <b>no evidence within the impact analysis that proves why a further increase is needed</b>. NJUG believes that significant improvements have been achieved since overrun charges were first implemented, and the current levels have proven themselves to be an effective incentive for utilities to finish their works on time as well as a deterrent against overrunning. Additionally, utilities are either incentivised through their regulatory settlements or through the need to compete, to constantly improve the efficiency with which they undertake works. This, coupled with the reputational impact of elongating the duration of works unnecessarily, means that utility service providers are continually looking to reduce site occupation, both in terms of size and duration of works, particularly as utilities are unable to pass on any overrun charges.</p>			
<p>The impact analysis states that an assessment will be carried out in 2013. NJUG would strongly support a full assessment being carried out, especially given that overrun charges were first</p>			

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implemented in 2001 and have yet to be assessed. We would like to understand how this will be delivered and would be happy to assist as NJUG or preferably as part of HAUC(UK).

The document also states that the previous Transport Minister was concerned that the current levels of overrun charges do not reflect the level of disruption caused – NJUG would again like to understand the basis for this statement and would point to the **well-documented reduction in durations that has resulted from the introduction of overstay charges**.

Finally, the impact assessment highlights the support of local authorities for the increase in overrun charges. As Government should be aware, **local authority budgets** and those of their corresponding highway departments are under immense pressure at this very challenging economic time along with having to deal with the vast increase in potholes arising over the last couple of winters. It is therefore unsurprising that they support the initiative.

As highlighted previously, it is imperative central Government take a lead in driving the correct behaviours. To this end, and again as noted earlier, NJUG would strongly encourage the installation of a **Road Works Commissioner for England, Wales and Northern Ireland**, modelled on the role of the current Scottish Road Works Commissioner, to act as a neutral regulator for both local authority and utility works.

Equally, we urge Government to focus on **initiatives that encourage greater co-ordination** of works, rather than just increase charges, which given the existing improvements in durations, will merely result in increased costs for utilities and their customers, rather than result in any further dramatic reduction in durations.

Additional comments include:

- It is important that there should be a period of stability to **allow time for the embedment of current legislation** – in building working relationships between statutory undertakers and highway authorities, it may take several years to reach a high level of performance by utilities in reducing work durations to minimise disruption.
- There are many assumptions in the impact assessment, and no sound evidence. For example, less than 10% of the total national number of highway authorities has been taken as the basis for the proposal.
- What data are the figures in the Table 1A of the draft regulations based on? There is no calculation to support the levels of charging.

Finally, NJUG would be interested to know whether or not the proposals have been referred to the Better Regulation Executive for comment, given Government's commitment to the Executive's principles?

## GENERAL

### Question 8

<b>Q8: Are there any additional issues that are not covered by this consultation?</b>			
Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
<b>If so, please describe why and provide supporting evidence</b>			
1. With a new Government in office, the time is <b>right to take a fresh look at what is most effective way to manage the disruption</b> to road users that is the unfortunate consequence of works in the carriageway.			

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To be successful, any approach to reducing disruption to road users from works in carriageway must start by recognising that both utilities and local authorities carry out works in the carriageway, and are responsible for about the same proportion of disruption (about 5% of the total disruption to road users each). Targeting measures just at utilities (or just at local authorities) simply will not solve the problem.

Our strong view is that it is only by utilities and local authorities working together through better co-ordination, communication and co-operation that significant progress will be made. The key to this is the Network Management Duty for local authorities to co-ordinate all works. To make this work effectively, all planned works should be required to be registered in advance – whether they are carried out by local authorities or utilities – and central Government should seek to spread best practice in carrying out the Network Management Duty.

Instead of this co-operative, holistic, approach, the previous Government proposed measures targeted solely at utilities, such as this proposal for excessive and unjustified increases to overrun charges. Rather than applying ever higher charges to utilities without benefit to road users, we call on the new Government to review the whole approach to managing disruption to road users and focus on encouraging utilities and local authorities to work together to the benefit of all road users.

2. NJUG would like to understand **what measurement of existing overrun charges has been carried out** by the Department for Transport since (a) implementation in 2001, and (b) since the DfT Street Works Summit in 2009. At the Summit, and within the resulting action plan, the previous Minister argued that he was willing to consider a ten-fold increase to overrun charges on traffic-sensitive streets. Utilities took this seriously and many implemented immediate changes. We do not believe there has been any analysis since then, and feel that the actions taken since this warning was delivered should be analysed and assessed before increases can be justified. This information would be particularly enlightening given the implementation of the London Code of Conduct which has demonstrated a marked improvement in a number of key areas including out of hours working and the previous Minister's own recognition at the NJUG Awards 2009, that there had been significant improvements over the previous few months since the DfT's summit.
3. Under the Traffic Management Act 2004, local authorities have a **Network Management Duty** (NMD) to ensure the expeditious movement of traffic over their networks. This consultation claims that increased overrun charges will assist in the fulfilment of the NMD. However, NJUG does not believe that increased charges should be necessary for the fulfilment of the NMD, nor that they will result in significant further reductions in durations given the improvements already made, the financial incentives may well lead to a regrettable compromising of quality. If local authorities are struggling to fulfil their NMD role to coordinate works on their network, they should look to employ a coordinator to specifically fulfil this task and work collaboratively with all works promoters in pulling together advancing planning information, as has been done in certain areas of the country, with utilities and local authorities working together to plan and co-ordinate works.
4. Whilst NJUG understands that occupying the carriageway on busy roads can add to congestion, we are **disappointed that the proposed increase also applies to works carried out wholly in the footway or verge** that do not affect congestion. This again seems an unnecessary burden given the aim of Government to combat congestion on the road network. NJUG also believes that as the works are wholly unplanned, immediate works should exempt from charges.
5. We are disappointed that once again **excessive charges are only imposed on utility organisations** and that no similar incentives apply to works carried out on behalf of local authorities. Local authority works account for fifty percent of all works carried out on the street, yet they are not governed by a similarly robust regulatory regime or incentivised to minimise

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occupation of the streets. Furthermore, this policy adds to recently implemented regulations, including fixed penalty notices, a revised noticing regime, and new permit schemes, none of which have been professionally appraised to confirm their effectiveness. Given this fact, further regulatory action would seem to challenge the principles of better regulation.

6. The **bulk of the cost of administering overrun charges and these proposed changes will once again fall on to utilities**, at a high level, yet there is no recompense against those highway authorities who continually fail to follow the legislation correctly, hence relying on the statutory undertakers to correct the highway authority administrative errors for them.
7. The draft regulations in Table 1A refer to 'intermediate works' rather than 'immediate works'.