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National Joint Utilities Group (NJUG)

Response to the Red Tape Challenge – Street Works and Associated Regulations

Background

The National Joint Utilities Group Ltd. (NJUG) is committed to self-regulation of all works undertaken on the street and continues to work hard towards this aim. We therefore welcome the Government's Red Tape Challenge and hope that the comments below are helpful.

The Street Works (Reinstatement) Regulations 1992 [SI 1992 No. 1689]

NJUG Position

The Street Works (Reinstatement) Regulations 1992 [SI 1992 No. 1689] should be retained.

Background and Reasons

This regulation applies to England and Wales and was amended via The Street Works (Reinstatement) (Amendment) Regulations 1992 [SI 1992 No. 3110]. It was subsequently amended for England (only) via The Street Works (Reinstatement) (Amendment) (England) Regulations 2002 [SI 2002 No. 1487] and Wales (only) via The Street Works (Reinstatement) (Amendment) (Wales) Regulations 2006 [SI 2006 No. 2934 (W.266)].

Despite subsequent amendments, elements of the original 1992 Regulations (No. 1689) are still in force. These regulations are the primary legal instrument under which reinstatement is carried out supporting reinstatement under NRSWA, and without them there would be no legal enforcement.

Without these regulations there are no facilities to impose the primary legislation (the objective of which is to provide legal standards for reinstatement of the road) which would result in conflict between authorities and utilities on the standard to which a road must be returned to use after works. It is therefore absolutely essential that they are retained.

The Street Works (Maintenance) Regulations 1992

NJUG Position

The Street Works (Maintenance) Regulations 1992 should be retained.

Background and Reasons

It prescribes certain powers available to the Highway Authority in the event of Undertakers not maintaining their apparatus under S81 of NRSWA. Whilst this measure does potentially impose a burden on businesses, Undertakers have a statutory duty to maintain their apparatus in an appropriate state of repair, and if they do not, authorities must have a right to put right / make safe in the interests of public safety. They also helpfully define "apparatus" which ensures that the regulations are only applied appropriately to defined utility assets.

On that basis NJUG advocates the retention of these regulations as an instrument of last resort, to ensure highways have powers to act if absolutely necessary.

The Street Works (Qualifications of Supervisors and Operatives) (England) Regulations 2009

NJUG Position

The Street Works (Qualifications of Supervisors and Operatives) (England) Regulations 2009 must be retained and strengthened.

Background and Reasons

The 2009 regulations had and still have the support of the Highway Authorities and Utilities Committee (HAUC(UK)) as the joint representative group of local authorities and utility companies. These regulations address the issue of improving health and safety as well as quality of workmanship at street works by requiring people from England with street works registration to undertake a re-assessment every 5 years.

Without these regulations it would be possible for individuals working on the public highway to simply renew their street works qualification without showing any continuous development despite the ongoing changes in safety, excavation and reinstatement requirements.

We understand from the Department for Transport that some concerns have been raised about these regulations and we would ask that any issues are passed to the HAUC(UK) Training and Accreditation working group to resolve, as these regulations are absolutely essential and indeed should be strengthened to make it a requirement that anyone working in England shows proof that, if their street works registration expired after April 2011, they have undertaken a re-assessment, as it can be up to 18 years since they had been reassessed to work on the public highway if they are outside of England.

Whilst there is a cost to business in undertaking training and the assessment itself, these costs are more than offset by the reduction in risk of operatives undertaking unsafe practices and therefore exposing themselves or the public to unnecessary injury or even death. There is much independent evidence from organisations, including the Health and Safety Executive, that the costs of any unsafe practices far outweighs the costs of training / assessment.

In terms of street works costs associated with unsafe practices, these include:

- The unquantifiable cost of someone being killed
- The lost time of any individuals injured
- Management investigations
- HSE and / or police investigations
- Disruption from extended barriering off of the incident area
- The suffering caused to individuals and their families.

Additionally, if an accident results in the loss of supply of a utility service there could be impacts on residents, business, hospitals and schools.

To remove the regulations would make it much more difficult to ensure a consistent standard. Whilst many larger utilities already have in place strong health and safety policies and practices, in austere economic times, without the regulatory requirement, other smaller companies may not undertake the refresher training, or may lengthen the gap between refreshers, inevitably leading to lower standards.

The Street Works (Fixed Penalty) (England) Regulations 2007

NJUG Position

The Street Works (Fixed Penalty) (England) Regulations 2007 should be improved.

Background and Reasons

Fixed Penalty Notices (FPNs) have been effective in raising standards of Noticing, with many utilities now performing at in excess of 95% compliance. However, despite this improvement not all authorities have taken advantage of this measure to improve co-ordination. We have not therefore seen any evidence of the assumptions within the Department for Transport's original cost benefit analysis that such improved administration would deliver improved co-ordination by authorities and consequent reduced disruption.

Whilst NJUG understands the reason behind setting regulations to provide for the payment of a fixed penalty instead of a summary conviction, in reality this has led to a large number of fixed penalty notices from some – but not all – authorities, without any consideration as to whether the claim could stand up in court, as required if the penalty is not paid. As a consequence this has led to utilities spending significant amounts of administration time investigating unfounded penalties and then discussing the issues with local authorities.

The national Highway Authorities and Utilities Committee (HAUC(UK)) produced a voluntary Fixed Penalty Notice Advice Note, calling for a reasonable approach when issuing FPNs. The majority of authorities follow this advice, however some do ignore it and routinely give fixed penalty notices on a system-generated basis. Whilst HAUC(UK) have repeatedly stressed the importance of a reasonable approach, some authorities persist in widescale imposition of FPNs.

So, in NJUG's view, Government's focus should be on ensuring consistent and reasonable application of these regulations, rather than changing or revoking the regulations themselves.

The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007

NJUG Position

The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 should be retained but should be redrafted.

Background and Reasons

The Street Works Regulations are by their very nature quite complex in having to cover many aspects of NRSWA/TMA requirements for the provision of notices/permits for works, and associated restrictions on highways.

Although difficult to change, it would be worthwhile analysing whether the regulation references could be simplified into one common document or guidance note. At present one has to read both NRSWA 1991 and TMA 2004 legislation to understand which section the above regulations are referring to at any one time, there being no distinction in the regulations as to which primary document they are referring to at any time, and the fact that the TMA amendments to NRSWA only affect certain sections.

Further to this suggestion regarding the simplification of the regulations, please find below a number of suggestions relating to specific clauses in the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 which would reduce some of the burden on business.

Regulation 4 (5) – Register

Much of the data referred to in this clause is required to be maintained by the authorities, yet some do not maintain or even input their own data for these requirements. NJUG would like to suggest insertion of a clause that makes it essential that this data is maintained and if possible impose penalties on those authorities who do not comply.

Regulation 11 (6) – S58 Notices

NJUG would like to see this regulation amended to require authorities to update the National Street Gazetteer with any S58 Notices or S58A designations in the time laid down by statute.

The Street Works (Recovery of Costs) (England) Regulations 2002

NJUG Position

The Street Works (Recovery of Costs) (England) Regulations 2002 must be retained.

Background and Reasons

This regulation is made under the authority of NRSWA S96. It sets out the rules that authorities must follow when calculating costs, including overheads, which may be raised under other parts of NRSWA.

If this regulation was revoked there would be no constraints on local authorities when calculating costs. Its retention is therefore essential to avoid excessive charges being levied on utility companies.

The Street Works (Records) (England) Regulations 2002

NJUG Position

The Street Works (Records) (England) Regulations 2002 should be retained and implemented as soon as possible.

Background and Reasons

The Street Works (Records) (England) Regulations 2002 and the associated Code of Practice were reviewed in 2008 by a HAUC(UK) working group led by DfT. Recommendations and changes to reflect changing technology and more accurate and timely updates were provided to the Department to complement the work carried out by the National Underground Assets Group (NUAG). This will reduce the amount of disruption caused by exploratory excavations and improved safety and reduce accidental strikes of utility apparatus.

NJUG therefore strongly recommends that these changes are reviewed and the regulations updated and implemented as soon as possible to encourage both safer working practices and reduced disruption.

The Street Works (Sharing of Costs of Works) (England) Regulations 2000

NJUG Position

The Street Works (Sharing of Costs of Works) (England) Regulations 2000 should be retained.

Background and Reasons

These regulations relate to S85 of the New Roads and Street Works Act (NRSWA) and state what can be charged in relation to diversionary works and what percentage of the allowable costs are borne by which party and under what circumstances.

They are essential to the function of the Act and the Diversionary Works Code of Practice (Measures Necessary where apparatus is affected by Major Works). It is important to note that whilst these regulations state what can be charged in terms of percentage payable, and by whom, the Street Works (Recovery Of Costs) (England) Regulations 2002 apply to S96 of NRSWA.

These later regulations identify how and what can be charged within the recovery of cost calculation rather than what percentage of the allowable costs are born by which party and under what circumstances.

Both of these sets of regulations are therefore interwoven and co-dependent in the application of the Act and the code of practice, and are vital to ensure utilities recover an appropriate level of costs in the event of being asked to divert apparatus to facilitate major urban regeneration or transport projects such as Crossrail, tram projects or the Thames or Northern Gateway projects. These regulations have been invaluable in minimising protracted negotiations on the level of cost recovery and developed following extensive work undertaken by the industry to come to an appropriate level of cost recovery. Their removal would result in increased disputes between developers and undertakers, and the potential for greater demands for utilities to bear the costs of diverting their apparatus, even though it is to support the development of major infrastructure / building projects.

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

NJUG Position

The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009 should be retained, but at the current rates only.

Background and Reasons

The introduction of S74 charges in 2001 and the increase in 2009, have resulted in a step-change reduction in the duration of street works. This is evidenced by Transport for London who recently confirmed that only 2% of street works overrun on its network (the busiest London streets) i.e. a 98% compliance with agreed timescales, and other authorities have acknowledged the reduction in S74 charges, including Kent County Council who have just confirmed that 94% of works from February 2010 to December 2010 were completed within the agreed timescale. However, NJUG is concerned that the Government is currently considering further significant increases in S74 charges, which:

- Will not deliver the same improvement, as much of the possible reduction has already been achieved.
- Will increase costs disproportionately to any benefit, particularly for smaller scale works such as utility connections, which customers will have to pay on top of their connection charge.
- Are not necessary, given TfL's recent evidence of the current S74 overstay charges' effectiveness and as utilities are already incentivised to be efficient and minimise the duration of works, through either their regulatory settlements (gas, water and electricity) or commercial pressures (communications).
- Could drive the wrong behaviours by utilities and encourage some local authorities to see S74 as an income stream because of the large numbers of works and figures involved.

Therefore NJUG recognises the value of retaining the existing S74 regulations at the current rates, but does not support any further increase, which would significantly increase costs, particularly on the smaller scale roads, without any demonstration of additional benefits in terms of reduced disruption.

The Contracting Out (Highway Functions) Order 2009

NJUG Position

The Contracting Out (Highway Functions) Order 2009 should be improved.

Background and Reasons

This regulation lists activities, contained mainly in the Highways Act 1980 and NRSWA, which can be contracted out by authorities to third parties (invariably management companies). This includes virtually all activities which control utility operations. NJUG believes that whilst the decision on whether to contract out activities is for local authorities to make themselves, the regulations should be tightened to ensure inappropriate incentivisation is avoided. Currently we are seeing certain functions contracted out by some authorities being increased due to incentivisation to generate income, based on numbers issued, similar to parking offences. These include FPNs, S74, Inspections and Coring.

The Street Works (Charges for Occupation of the Highway) (England) Regulations 2001

NJUG Position

The Street Works (Charges for Occupation of the Highway) (England) Regulations 2001 should be revoked.

Background and Reasons

Despite working closely with DfT, the London Mayor and Transport for London to seek to develop a workable, robust and targeted scheme, NJUG does not believe that S74a lane rental provisions will provide additional benefits in terms of reduced disruption, over and above the existing legislation available for local authorities to manage street works, which we believe are sufficient, but could be used more effectively and consistently.

The Government trialled lane rental in Camden and Middlesbrough in 2002. The conclusions of the trial were inconclusive and did not deliver a demonstrable reduction in disruption over and above the other legislation in place. However, had the trials been charged this would have resulted in a very significant increase in costs to utilities and their customers (based on the Camden trial rates of £650 per day this would equate to £750 million per year if implemented across England, or a £35 increase per consumer household. If implemented using the daily rates of up to £2500 being considered as part of the TfL lane rental proposal this would equate to between £1.5 to £2.0 billion or £69 per consumer household).

Since then the Government has improved the Noticing regulations, increased S74 overstay charges, introduced permits schemes and fixed penalty offences. Whilst the benefits and costs of these regulations have not been reviewed by DfT, it is recognised that these regulations have improved the notification of street works and have reduced durations. Indeed, individual authorities have reported significant increases in the quality and timeliness of Notices, with most utilities in excess of 95% compliant, and Transport for London has confirmed that only 2% of street works overrun on its network (the busiest London streets). Additionally, Government has introduced a range of other regulations.

Therefore, NJUG asserts that the myriad of existing legislation is more than sufficient to enable local authorities to manage street works, and we suggest that Government should measure their effectiveness in terms of costs and benefits before imposing a further layer of regulation and costs on utilities and their customers. If Government is serious about reducing disruption, then NJUG would advocate concentrating on ensuring the existing regulations are used more effectively and consistently, and consider applying similar incentives to highway authority works, which account for 50% of works on the street.

NJUG therefore suggests that the lane rental regulations are not necessary and should be revoked.

The Traffic Management Permit Scheme (England) Regulations 2007

NJUG Position

The Traffic Management Permit Scheme (England) Regulations 2007 urgently require a review as to their impact as promised by the previous Government in Parliament.

Background and Reasons

NJUG works with local authorities developing permit schemes to seek to develop workable and robust proposals that focus on reducing disruption whilst not placing unnecessary burdens on utilities and their customers, and so believe that those schemes that focus on major planned works on the busiest streets, like Kent and Northamptonshire, are the most likely to deliver benefits in terms of reduced disruption. These schemes enable authorities and utilities to work together to plan and co-ordinate works, whereas schemes which cover all works on all streets mean that the volume of permit applications impacts on the ability to focus on those works which cause the most disruption.

However, the regulations as drafted allow for different types of scheme. The previous Government committed to review the effectiveness of the different schemes one year after implementation; however the present Government has chosen not to honour this commitment, preferring for local authorities themselves to undertake reviews of their schemes. Whilst some of these are now taking place and initial indications are that permits are encouraging greater dialogue and collaboration between authorities and utilities, the greatest benefits have been from authorities positively applying the same principles to their own works, leading to better co-ordination. For instance, the Kent scheme has delivered a reduction in disruption of 5 years and 7 months saved between February and December 2010, however, there appears to be no analysis of the additional costs, administrative burden and impact on utility productivity.

Additionally, the Government has confirmed its intention to devolve approval powers of permit schemes to local authorities, who will then be tasked with developing and approving their own schemes, which is likely to lead to numerous different schemes, with inconsistencies resulting in additional burdens and potential inadvertent non-compliance by utilities.

Government currently reviews all existing schemes prior to approving them. In all cases so far this has lead to amendments before their final approval. Without this independent scrutiny there is a real risk of inadvertent misinterpretation of the permit regulations and potentially high levels of costs being unnecessarily imposed on utilities and their customers, with little or no reduction in disruption.

Without a baseline of the level and causes of congestion across England and an independent review of all the legislation introduced over the past few years, there is no evidence that the benefits that are attributed to the current permit schemes have arisen as a result of the schemes themselves or the other enhanced legislation introduced shortly before permit schemes (Revised Noticing and increased S74 charges regulations). Neither is there any assessment of the additional utility costs and burdens arising from each regulation. We therefore urge Government to commission a review of all the regulations introduced over the last few years to identify which if any have had a positive effect on disruption and whether that outweighs the additional costs imposed.