

Mr P Negus
Department for Transport, Local Government and the Regions
Traffic Management Division
Zone 3/15, Great Minster House
76 Marsham Street
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12 October 2001

Dear Mr Negus

**THE NEW ROADS AND STREET WORKS ACT 1991 - SECTION 74A –
CHARGES FOR OCCUPATION OF THE HIGHWAY: CONSULTATION ON
DRAFT REGULATIONS**

Thank you for including the Office of Water Services in the consultation process on these draft Regulations.

We have previously responded to your consultation papers on section 74 of the New Roads and Street Works Act 1991 and the charges for street works (lane rental) option. We have raised our concerns with you and made proposals about a system of charging for street works. For ease of reference I attach a copy of our letter to you dated 26 October 2000.

We note that the draft Regulations refer only to lane rental pilot schemes. However, you also seek our views on the draft Regulatory Impact Assessment which only presents estimates of compliance costs on a national basis. Therefore, whilst our comments principally relate to specific issues surrounding the two pilots to be launched next year, a number of the points made are more general and have greater significance in the context of the wide-scale application of lane rental across the country.

In general we welcome the draft Regulations and the proposed pilot schemes in Camden and Middlesbrough for which they provide. We see this as an opportunity to take a thorough look at the lane rental option and develop a comprehensive Regulatory Impact Assessment. The Regulations provide for an apparently robust process for charging utilities for occupying the highway. We believe that a thorough test of the efficacy of the lane rental system at reducing disruption compared with the arrangements currently in force is essential before contemplating any move to make lane rental powers available to all highway authorities.

Our view is that the proposed pilots should run for a period of at least two years to enable a robust evaluation and comparison of the merits of the two

alternative systems. This period is necessary to ensure that the effects of any seasonal variability in street works activity (eg as a result of the greater incidence of burst water mains in winter) may be properly taken into account.

At present it is unclear who will assess the effectiveness of either system or how such an assessment will be carried out. We look to the Government to ensure that this important exercise will be undertaken with all due care and rigour.

We are mindful of the fact that only the lane rental system provides a guaranteed income stream for the highway authorities. It is also true that the success of the current system of fining utilities for over-staying is heavily dependent on the strictness with which the highway authorities exercise their powers. It is important, therefore, that any comparative evaluation of systems takes account of the authorities' policy and practice with regard to the administration and policing of the current arrangements.

We have the following additional comments.

- Effect on customers bills

You should recognise that both the costs of the pilot schemes and those associated with any future general application of lane rental would not fall on company profits but on customers' bills. Compliance with any new Regulations is a statutory obligation on the water companies and, as such, is a function that we have a duty to finance.

Thus, it is inherent in the proposals that there will be a transfer of resources from water customers to local authority taxpayers. We would look to the full RIA to address this issue. However, the fairness of water customers paying the proposed charges does appear questionable when it would be the whole community that stands to benefit from any reduction in disruption.

The water industry provides an essential service to the whole community in supplying drinking water and removing waste water. The nature of these functions, and the infrastructure that is necessary to deliver them, mean that highway disruptions are inevitable and unpredictable. Occasional inconvenience is the price we pay for being able to enjoy a world-class amenity.

- Highway drainage revisited

Water companies are currently responsible for highway drainage (i.e. the collection and treatment of run-off from road surfaces). The considerable costs of this are passed on to customers, not borne by the taxpayer or road user. The current proposals raise the question of who should pay for highway drainage. Up to now, water companies have, arguably, enjoyed an offsetting benefit in their right to undertake street works without cost to them. Imposing charges would change this balance.

Highway drainage and who pays for it is an issue that distinguishes the water industry from the other utilities. We consider that the current reciprocal arrangement should not be overlooked if and when Ministers make decisions on the possible wider application of lane rental. One possible solution would be to exempt water companies from lane rental charges in recognition of the current 'knock for knock' arrangement.

- Regulatory Impact Assessment

Your draft regulatory impact assessment estimates costs of £109m - £334m annually across Great Britain for all the utility companies. However, We are aware of an estimate for a single water company provided by Water UK of £120m per year. We, ourselves, do not hold the information to enable us to produce a reliable cost estimate.

While we do not have much information about how either of the estimates was prepared we consider their reliability to be suspect. In particular, we think that the Water UK estimate almost certainly overstates costs and is not representative of the industry as a whole. We consider that the disparity of the cost estimates and their unreliability are evidence of the need for a more thorough RIA to be carried out. The proposed pilot schemes will greatly assist the required study. Those conducting the RIA should involve the water companies, other utilities, the highway authorities and the relevant regulatory bodies.

The RIA should fully examine not only the direct costs, but other issues such as the implications for serviceability of the asset systems, environmental policy and leakage control (see below).

- Reducing disruption

As explained above, wherever lane rental is introduced as a consequence of new Regulations then customers are liable to bear the full costs of the proposals. This will not give companies the right incentive to work efficiently and to high standards. Consequently, the approach may not reduce the time that roads are disrupted. The current 'fine' for over-staying (for which companies are not specifically reimbursed through price limits) provides a better incentive.

- Quality of the work undertaken

Ensuring water quality and the safety of road users should be paramount and we are concerned that a system of full lane rental may compromise these matters. Unlike the current system of fines for prolonged occupation of the highway, lane rental could result in the quality of street works being compromised by companies 'cutting corners'. For example, when reinstating paved surfaces, in an attempt to hurry the job, companies may neglect to follow best practice when compacting the underlying layers of backfill. There is no such incentive under current arrangements. Provided

the allowed period of occupation agreed between the highway authority and the utility is reasonable, there should be sufficient time for the efficient utility to properly carry out the street works before any charges are made.

- Effect on leakage

Lane rental will undoubtedly increase the costs of the leakage control carried out by water companies. As a result there is a risk that water companies may be less inclined to pursue leakage control with the vigour we think necessary. At the very least the economic level of leakage will be raised meaning that some leaks which otherwise would have been fixed are left unrepaired.

- What about Wales?

We know that the National Assembly for Wales has not yet produced any lane rental proposals. The Government should be aware of certain administrative difficulties if the Assembly chooses to proceed at a different pace. For example, the implications for Severn Trent Water and Dwr Cymru, each of which operate partly in England and partly in Wales, would need careful consideration.

To sum up our key points, we consider that:

- the proposed pilots offer the opportunity to thoroughly examine the proposition that lane rental is more effective at reducing highway disruption than the current arrangements of charging for prolonged occupation, and should go ahead.
- the efficacy of both the current arrangements and the lane rental pilots at reducing disruption should be thoroughly evaluated after a period of not less than two years.
- a comprehensive Regulatory Impact Assessment be carried out. This should involve the highway authorities, the water companies and other key interested parties and fully consider issues such as leakage control as well as the costs and benefits of the proposals.
- the unique position of the water industry undertaking highway drainage at no cost to the taxpayer or road user should be recognised. The current responsibilities for highway drainage should be reviewed if the application of the lane rental system were to extend beyond the pilot schemes.
- water customers would bear the full costs of any charges the highway authorities impose on water companies under the Regulations. Bills will go up.

If the draft Regulations are passed, enabling the launch of the two pilot schemes, we will need to take account of the additional costs to Thames Water and Northumbrian Water at the next price review in 2004. As the costs

will be spread over each company's customer base we would expect the effect on the average bill to be modest. However, bill increases might be considerable if further Regulations were to be introduced at some future date, extending the lane rental system across the country.

Yours sincerely

W H Emery
Director of Costs & Performance and Chief Engineer