



HIGHWAY AUTHORITIES & UTILITIES COMMITTEE

Advice Note No. 2009/09

Charging for Approval for the Use of Multiway Portable Signals

Version:	V1
Control Document No.:	23
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Date of Document:	<i>15th October 2009</i>

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Background:

By virtue of varying enabling legislation, utilities have the power to carry out work on apparatus in streets and are statutory Undertakers subject to the New Roads and Street Works Act 1991 ("the 1991 Act").

By section 65 of the 1991 Act, in carrying out street works, Undertakers are under a duty to put in place safety measures. In particular, section 65(1) of the 1991 Act requires that the Undertaker "shall secure? (b) that such traffic signs are placed and maintained, and where necessary operated, as are reasonably required for the guidance of direction of persons using the street", and section 65(3) provides that if the Undertaker does not comply with the practical guidance given by the Secretary of State as contained in issued codes of practice, then this is evidence of failure by the Undertaker to comply with the duty in subsection (1).

Since the Council is the relevant highway authority, then the Council is also the relevant street/traffic authority for the purposes of section 49(1) of the 1991 Act.

In order to comply with its duty under section 65 of the 1991 Act to put in place safety measures, (including where necessary portable traffic signals), communication between an Undertaker and the highway authority is required under Section 65 of The Road Traffic Act to enable the undertaker to comply with any directions given by the street/traffic authority in issuing their approval.

The current example/case mentioned below and previously judicially reviewed refers to approval in writing given where a shuttle section includes a road junction

The point then arises – is it reasonable for a highway authority to charge for giving that written approval.

Charging:

This HAUC advice note reflects legal opinion jointly commissioned by a Council and a statutory Undertaker. Copy of the original legal opinion is available from the organisations involved via the HAUC(UK) secretariat.

Opinion was sought as to whether a Council is entitled to be paid for services, in approving the use of portable light signals on the highway, from an Undertaker as claimed by the Council in proceedings issued in the County Court. The Council claimed that it had provided services to the Undertaker in connection with the written approval the Council had given the Undertaker for the placing and operation of temporary portable traffic signals in two streets within the Council's area, and that the Council was entitled to be paid by the Undertaker for providing such services.

The conclusion from this legal advice is that a charge cannot be made by a highway authority in approving the use of multiway portable light signals on the highway.

On this basis HAUC(UK) recommends that a highway authority should not make a charge for solely approving the use of portable light signals at junctions. If the works promoter requests the highway authority to provide advice on the design of the layout for the portable light signals then that is a matter between the highway authority and the works promoter and is not included in this advice note.

End of Advice Note