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Organisation Represented: The Chartered Institution of Highways & Transportation

Number of people you are representing: 12,000

The Chartered Institution of Highways and Transport's (CIHT) response to OFGEM's **Consultation on our minded-to position for the determination of re-opener applications in respect of additional income associated with the Traffic Management Act (and Transport for Scotland Act) under the first gas distribution price control review**

The CIHT is pleased to have the opportunity to submit evidence to OFGEM.

Question 1: Do you agree with the proposed adjustments to the revenues associated with TMA for the three GDNs, North London, Southern and Scotland?

CIHT disagrees with the proposals. One of the primary purposes of the Traffic Management Act 2004 is to improve the management of the highway network and minimise the time spent on that network by those undertaking utilities works. CIHT are concerned that the proposals will result in removing the incentive to increase efficiency in the management of utility works. Increased congestion and delay is caused by poorly managed utility works and also results in additional costs for road users whilst the proposals would enable penalty charges to be recharged to customers.

Many of the costs associated with the Traffic Management Act are easily avoidable if works are both planned and executed properly and should therefore not be passed onto consumers. This would effectively allow a statutory undertaker to pass on penalty charges to the public which are avoidable and result from their failure to comply with Government legislation.

It is interesting to note that only three of the eight GDNs have confirmed that they are concerned at the significant costs they are incurring, including penalties, following the implementation of the Traffic Management Act. Consequently why is it considered

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appropriate to change the arrangements if five out of eight are content with current system and are hitting their targets as a result of better management practices? The proposal could in fact have an adverse effect on these five, leading to increased inefficiencies.

Utility works have a considerable impact on the condition of the highway network and the public purse, utility companies already having a legal right of access to the highway network. Recent test results have confirmed that a significant proportion of works do not comply with the national reinstatement specification. Research studies have also confirmed that reinstatement works significantly reduce the design life of the asset even if the works undertaken complies with the relevant national specification. It would be much more effective to ensure that works carried out by utility providers are well planned and efficiently executed therefore avoiding any additional costs.

Permit Fees

Permit schemes currently provide local authorities with the ability to ensure that works are carried out efficiently and assist them in delivering the additional duties placed upon them by the Traffic Management Act 2004. CIHT worry that any changes to that system may increase utility company occupancy on the already overstretched highway network resulting in further costs to the taxpayer. It should be noted that permit fees only cover the costs of providing a permitting service over and above the costs of running a noticing regime.

Much of the additional cost incurred by utilities in complying with the requirements of permit schemes could be avoided if the correct information was provided. Generally the refusal by a highway authority to issue a permit is a result of the fact that they have failed to add the required conditions to their permit applications.

One of the main purposes of the Act is to improve the management of the highway network to ensure the expeditious movement of traffic and reduce the network occupancy by those undertaking works. The cost to the UK economy of the disruption caused by utility works in the highway is substantial and was recently estimated at over £6billion.

Fixed Penalties

Charges relating to Fixed Penalty Notices are an avoidable cost if accurate notices have been submitted in good time. Effective planning and works management by utility companies would ensure that no extra costs were incurred. The proposed principle that consumers should have to subsidise the poor performance of utility providers is clearly wrong.

The requirement for timely and accurate information was a result of the failure by some utility companies to provide the most basic of information on the nature, location and programming of their work. Consequently, fixed penalties are partly a result of a lack of commitment by some utility companies to maintain adequate systems to manage their works effectively which would remove the risk of failure. It is clearly unreasonable that the customer should be responsible for the cost of penalty charges which result from the failure of the utility companies to comply with legal requirements.

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Fixed penalty charges were introduced to enable certain offences to be discharged without the need to involve the Courts. Should the effectiveness of the penalties be reduced by allowing them to be passed on to the customer, it may be necessary to re-consider court action.

S74 Overstay charges

CIHT considers that all overstay charges, as with fixed penalty charges, are also an avoidable cost and consequently S74 overstay charges should not be passed onto consumers.

Under the Regulations, all charges imposed on works promoters must be reasonable and they can apply for variations to extend the duration of their works if they have reasonable grounds for doing so. Highway authorities cannot refuse reasonable requests and consequently there is no reason why overstay charges should be incurred as charges can be waived providing suitable representation has been received by the highway authority.

Again, non-compliance can result from a lack of investment in processes and systems to help improve efficient working and the penalty charges are intended to encourage better practice rather than reduce it and only penalise those who do not comply. It cannot be appropriate to reward non-compliance and inefficiency by enabling utility companies to recover these costs from customers.

Question 2: Do you agree with the proposed principles that have been set and that these should be applied to future TMA re-openers and price controls?

It is unacceptable for any avoidable charges to be passed on to the consumer who ends up paying for the inadequacies of the works promoter. There is a concern that a perceived relaxing in the regulation of utility companies, by endorsing the re-charging of penalty charges to consumers, will result in there being no incentive for behaviour to change to the detriment of the efficiency of the road network.

Disruption caused by utility works and the reinstatement of the highway is a national issue and it is essential that poor performance is penalised. The performance of utility companies needs to be carefully monitored and charges imposed for non-compliance. There is for example clear evidence of their failure to comply with the reinstatement specification and also the consequential long term damage caused to the surface and structure of carriageways and pavements. This increases the maintenance costs for local highway authorities that have to be met from already over-stretched and inadequate highway maintenance budgets and further reimbursement is necessary.

Rather than reducing the costs for utilities, charges should be increased to cover poor performance, additional administration, the impact of long term damage and their non-compliance with the relevant legislation. The delivery of a good public service must be considered alongside the profitability of the utilities companies.

Question 3: Do you agree with the timeframe within which it is proposed that additional revenues will be recovered?

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The timeframe is irrelevant as CIHT opposes the view that these costs should be passed on to the consumer. We contend that no reward should be considered where performance is sub-standard.

Clearly, in some cases the performance of the utilities in relation to work in the highway has been inadequate since the legislation was introduced over twenty years ago. There needs to be a more open dialogue with the regulators such as OFGEM to promote better performance from utility companies and reward good practice.

It could be argued that rather than reducing costs for utilities firms, charges should be increased to encourage improved performance and increased efficiency.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Smart', with a horizontal line extending to the right.

For further information contact:

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