HEA Guidance on the New Roads and Street Works Act (NRSWA)

Introduction

The New Roads and Street Works Act (NRSWA) sets out requirements for street works – that is works carried out by a statutory undertaker, licensees or contractors (including those acting as Independent Connections Providers (ICPs)) to place, inspect, maintain, adjust, repair, alter, renew, resite or remove apparatus and includes the requirement that at least one trained street works operative must be on site at all times when the street works are taking place. The Street Works (Qualifications of Operatives and Supervisors) (England) Regulations set out the general requirements for the qualifications of trained street works operatives.

NRSWA does not cover requirements for works for road purposes, except to require consideration to restrict street works in their vicinity and to require the street authority to coordinate works of all kinds – both street works and works for road purposes. The Street Works (Qualifications of Operatives and Supervisors) (England) Regulations apply only to street works operatives. Works for road purposes or road works are different from street works. Works for road purposes are works carried out to repair or improve the highway including footways, pavements, street lighting and traffic signals.

Contractual requirements

Some contracts have included requirements for contractors carrying out works for road purposes to comply with the NRSWA and / or for their operatives to comply with the NRSWA qualifications requirements. Where the contractor is also carrying out works as an ICP, then this aspect of the works would fall under NRSWA. However if the contractor is only carrying out works for road purposes – e.g. the installation and maintenance of street lighting, traffic signals and road signs – then neither the NRSWA nor the Street Works (Qualifications of Operatives and Supervisors) (England) Regulations apply to them, and therefore such contractual requirements are unenforceable.

An act or regulations can only be applied as set out within the act or regulations or any amendments thereto. Therefore the wording of any contractual requirements in this area needs to be carefully considered such that it does not seek to widen the application of a statutory instrument or legal document.

Clients also need to take into account that if they specify particular requirements in respect of operative qualifications which are not in accordance with legal requirements (e.g. H&S regulations, NRSWA) or in accordance with a nationally agreed standard (e.g. National Highway Sector Scheme 8 (NHSS8), the Highway Electrical Registration Scheme (HERS), Electrotechnical Certification Scheme (ECS) cards) then they run the risk of being considered as acting in the capacity of a contractor under the Construction (Design and Management) Regulations (CDM) in the event of an incident. This is because such specific particular requirements may have the effect of over-ruling legal requirements, nationally agreed standards or even best practice, when legally it is the employer's responsibility to ensure their workforce are suitably instructed, trained, provided with information and supervised and assessed as competent for the works they carry out.

Training and Assessment of Competence Considerations

In respect of excavation and reinstatement, there is some logic in contractors who carry out works for road purposes considering voluntarily adopting the training and assessment offered under the Street Works (Qualifications of Operatives and Supervisors) (England) Regulations, unless the excavation is minimal and the reinstatement temporary.

For signing and guarding, often known as temporary traffic management, the requirements are set out in the Safety at Street Works and Road Works Code of Practice, also known as the "Red Book" and for temporary traffic signals in An Introduction to the Use of Portable Vehicular Signals, also known as the "Pink Book". In addition there is guidance within the Traffic Signs Manual Chapter 8, but this does not over-ride the requirements of the "Red Book". The training standard adopted within NHSS8 and HERS is that previously agreed with the NHSS12D committee which covers installing, maintaining and removing temporary traffic management on rural and urban roads. Within NHSS 8 and HERS these are known as courses 302.1 - Installing, maintaining and removing temporary traffic management on rural and urban roads - and 302.2 - Installing, maintaining and removing positive traffic control including temporary / portable traffic signal equipment on rural and urban roads.

In respect of avoiding danger from underground services, the standard course adopted by NHSS8 and HERS is course 202 - Avoiding Danger from Underground Services. This is a comprehensive training course with a practical assessment, covering the use of plans and diagrams, visual assessment on site and the use of cable avoidance tools and signal generators. It was developed in response to a Highway Electrical Association member organisation who, at the time of the development of the course, had identified that the training offered under the NRSWA was insufficient, notwithstanding that in any event the Street Works (Qualifications of Operatives and Supervisors) (England) Regulations do not apply to contractors carrying out works for road purposes.

Conclusion

Contractors carrying out works for road purposes should adopt best practice by complying with the requirements of the Highway Electrical Registration Scheme (HERS) and as appropriate NHSS8. They may voluntarily adopt the NRSWA training and assessment for excavation and reinstatement. Where the contractor is also acting a an ICP, or as a contractor for an undertaker, then the relevant provisions of NRSWA apply to those activities and personnel.

Clients or those writing contracts on their behalf, can set out the competency requirements of relevant contractors by specifying registration to HERS with ECS Cards and as appropriate registration to NHSS8. For contractors carrying out street works, as opposed to works for road purposes, clients should require compliance with NRSWA – although as this is a legal requirement, contractors carrying out such works are bound to comply with it notwithstanding whether it is explicitly stated or not. There needs to be appropriate wording to enable the client to consider and if required restrict street works in the vicinity of works for roads purposes and to require the client to coordinate works of all kinds – both street works and works for road purposes.