



BRIEFING PAPER

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Street works in England

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Summary

This paper sets out the rights of utility companies and others to undertake street works and the powers available to street authorities to manage and mitigate those works.

Street works, distinct from other road works completed by highways authorities, are those completed by utility companies to install, repair and maintain their services. They are carried out by virtue of a statutory right or a licence and do not need the prior consent of the street authority.

The control of *how* third parties like utility companies carry out street works is the responsibility of the relevant street authority. Street authorities have powers to:

- prevent roads from being dug-up repeatedly;
- can impose fines for non-compliance;
- implement a 'permit scheme' for street works;
- specify which route street works should follow; and
- decide what day of the week and at what times works can be carried out.

More detail around the statutory rights and duties of the undertakers and street authorities, with respect to various parts of the street works process, is explained in Section 3 of this paper.

Since its introduction in 2010, the number of local highways authorities (LHAs) with a permit scheme has steadily increased, reaching a total of 95 Permit Authorities by September 2016, which represents 63% of the LHAs in England. The remaining LHAs continue to operate a notice regime, using the powers contained within the *New Roads and Street Works Act 1991* to coordinate and control works on their network.

Lane rental schemes were piloted from 2012 in London and Kent. Following a consultation in 2017, the Government has decided to allow other local authorities to bid for and set up lane rental schemes as a way of reducing the impact of street works on the busiest roads at the busiest times.

This paper does not deal specifically with winter maintenance, which is covered separately in [SN2874](#). Information on other roads-related issues can be found on the [Roads Topical Page](#) of the Parliament website.

1. Introduction

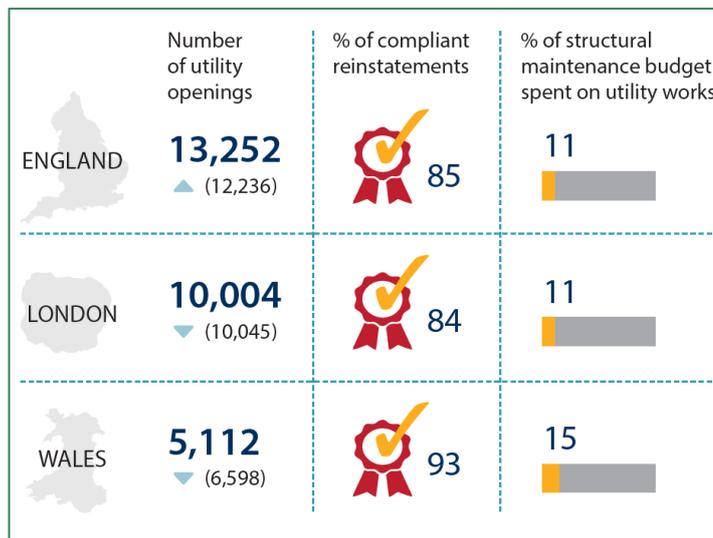
Street works, distinct from other road works completed by highways authorities,¹ are those completed by utility companies (e.g. water, electricity, gas and telecommunications) to install, repair and maintain their services. Much of the apparatus is placed underneath the road, so utilities' works frequently involve digging up the road.²

Street works from utilities companies are common place on England's road networks. As part of the Asphalt Industry Alliance's (AIA) 2018 Annual Local Authority Road Maintenance (ALARM) survey, it was estimated that on average, 13,252 utilities openings had taken place per local authority.³

In many cases, the utilities works are completed to standard and within the expected timeframes, but even in such circumstances, the works can cause delay and disruption on the roads network for other road users.⁴ This delay can be exacerbated when street works overrun or are mismanaged. Previous studies estimate that the cost of congestion resulting from street works is £4.3 billion a year.⁵

Mismanaged street works can also place a strain on already stretched local authority roads maintenance budgets. The 2018 AIA ALARM survey it was found that local authorities are spending an average of £1.3m (11%) of their carriageway maintenance budget each year addressing premature maintenance arising from utilities openings.⁶

Number of utility openings in past year (average per authority)⁷



¹ Works by local highway authorities to fulfil their duty to maintain their roads in good condition. These mainly consist of filling pot-holes or re-surfacing the roads and are known as 'road works'.

² DfT, [Road Works: Reducing disruption on local 'A' roads](#), April 2016

³ AIA, [Annual Local Authority Road Maintenance Survey 2018](#), 20 March 2018

⁴ Ecorys, [Evaluation of Street Works Permit Schemes](#), July 2018

⁵ Ibid

⁶ AIA, [Annual Local Authority Road Maintenance Survey 2018](#), 20 March 2018

⁷ Ibid

Poor reinstated roads from street works also have the potential to undermine the quality of the roads network. Such concern stems from the fact that opening a road to create a trench can reduce its structural life by up to 30%; this is despite a considerable majority of utility works being completed in accordance with the legislation.⁸

This paper outlines what the current legislation is regarding street works, what the respective statutory duties are on street authorities and undertakers of street works and what measures have been introduced to address concerns related to mismanaged street works.

⁸ Ibid

2. Legislation, policy and codes of practice

2.1 Overview of legislation

The primary legislation dealing with street works in England is the [New Roads and Street Works Act 1991](#) (the 1991 Act), as amended by the [Traffic Management Act 2004](#) (TMA).

Street works are carried out by public utilities and cable companies (“undertakers” hereafter) by virtue of a statutory right or a licence granted under the 1991 Act. They do not need the prior consent of the street authority (i.e. typically the relevant highway authority – see box below) to complete the works but they do need to give advanced notice to the relevant authority.⁹ The street authority can decide when the works should be done, and it can prohibit the digging up of resurfaced roads, except for emergencies, for a certain period.

Who are the undertakers and street authorities?

The two key stakeholders involved in street works are the undertaker of those works, usually a utilities company, and the street authority, usually the relevant highway authority.

A street authority and an undertaker are defined in Section 49 of the 1991 Act:

- Section 49 (1) of the 1991 Act defines a “the street authority” as either: a highway authority, if the street is a maintainable highway; or a street manager, if the street is not a maintainable highway.
- Section 49 (4) defines the undertaker” in relation to street works as “the person by whom the relevant statutory right is exercisable (in the capacity in which it is exercisable by him) or the licensee under the relevant street works licence, as the case may be.”

A highway authority may be the local highways authority if the street works are being conducted on the local roads network or may be Highways England if the works are being completed on the strategic road network.

Both interim and permanent reinstatements must conform to the statutory specification and undertakers executing road works must comply with prescribed material specifications and standards of workmanship when reinstating a road or footway and guarantee the performance of the reinstatement.

In addition, every street work must be carried out under a qualified supervisor and all street works must be guarded and lit with properly installed traffic lights where appropriate. Street authorities can carry out inspections of utilities' works, at their expense. All cases of defective reinstatement identified by the local authority may be rectified at the undertaker's expense.

⁹ Cable companies became statutory undertakers as a result of the licences issued to them by the Office of Communications ([OFCOM](#)) under the *Telecommunications Act 1984*, as amended; this allows them to install and run their systems and gives them the authority to break open streets

More detail around the statutory duties of the undertakers and the street authorities, with respect to various parts of the street works process, is explained in Section 3 of the paper.

2.2 Government policies

Successive government have sought to tackle the problem of private utility companies taking up the road to access cables, pipes, etc., causing delays, congestion and disruption.

The Conservative Governments (1979-1997) established the framework governing the work of the public utilities under the 1991 Act. It replaced the [Public Utilities Street Works Act 1950](#), and the bulk of its provisions came into effect on 1 January 1993. The Act implemented the main recommendations of the 1985 Horne Report on roads and the public utilities.¹⁰

The 1991 Act and associated regulations and codes of practice introduced new standards for the reinstatement of the road surface with public utilities and cable companies (referred to as “utilities companies” hereafter) being fully responsible for reinstatement following their street works.¹¹ This was to end the previously confused division of responsibility between street authorities and utilities companies.

When the 1991 Act was passed only a handful of utilities were permitted to dig up the road. By 2003-04 there were over 150 utilities able to conduct street works, causing significant growth in the levels of disruption caused by such works. The Labour Government heavily amended the 1991 Act under Parts 3 and 4 of the TMA. The TMA gave highway authorities much greater powers to minimise unnecessary disruption caused by poorly planned works: more control over where and when works could and could not take place; powers to put in place longer embargoes to protect streets that were dug up again and again; and greater enforcement powers.¹² The TMA was implemented by three sets of Regulations which came into force in spring 2008.¹³

The Coalition and Conservative Governments have sought to incentivise the better management of street of street works. In 2012, the Government increased the level of charges that may be imposed by highway authorities in England for unreasonably prolonged occupation of the highway (see Section 4.1). The Coalition Government also introduced regulations in 2012 to enable the trial of lane rental schemes in London and Kent. Both Governments have sought to encourage local authorities to take up powers available to them under both Acts to

¹⁰ DoT, *Roads and Utilities: Review of the Public Utilities Street Works Act 1950*, November 1985

¹¹ DfT et al, [Specification for the Reinstatement of Openings in Highways \(2nd ed.\)](#), June 2002

¹² for more information, see section IV of HC Library briefing paper [RP 03/92](#)

¹³ the *Traffic Management Permit Scheme (England) Regulations 2007* ([SI 2007/3372](#)); the *Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007* ([SI 2007/1951](#)); and the *Street Works (Fixed Penalty) (England) Regulations 2007* ([SI 2007/1952](#))

better manage street works, most notably through the implementation of permit schemes (see Sections 4.2).

In April 2016 the Government published a consultation on proposals to change the way works are carried out on the key local 'A' roads (which make up about 10% of the roads that local authorities are responsible for). This included ensuring that works on local 'A' roads are not left unattended over weekends but are instead either cleared or returned to traffic use, or are continued throughout the weekend and, separately, the prompt removal of temporary traffic lights once works are complete.¹⁴

Following that consultation, in September 2017, the Government sought views on whether the lane rental schemes in operation in London and Kent should continue and whether other local authorities to be allowed introduce lane rental schemes.¹⁵

The 2012 regulations that enabled to the trial lane rental schemes included a 'sunset' clause which meant the London and Kent schemes would have ended in March 2019 unless the regulations were amended. The Government ran a separate but related consultation in parallel seeking views on whether to remove the sunset clause to extend the lane rental schemes in London and Kent.¹⁶

Following these consultations, the Government decided to proceed with removing the sunset clause¹⁷ and agreed to allow other local authorities to bid for and set up lane rental schemes as a way of reducing the impact of street works on the busiest roads at the busiest times.¹⁸

There was suggestion by the Secretary of State in 2018 that street pavements could become the default location for new utility infrastructure to cut down on roadworks and potholes has provoked angry reactions from some quarters.¹⁹ This triggered a considerable stakeholder response, with many of the view that it would simply be shifting the problem and others concerned about the impact such a move would have on footpaths, which many perceived as being in a poor state.²⁰ No formal policy announcements followed.

The Government announced in September 2018 that it was investing up to £10 million in Street Manager, a digital planning service for drivers to plan their journeys to avoid roadworks. Due to launch in 2019, the platform will, as described by the DfT:

... generate real time data and will be free for technology companies and app developers to use. This will allow existing apps and providers, such as Waze and Google maps, to enhance their services making them even more accurate and allow other firms

¹⁴ DfT, [Reducing roadwork disruption on local 'A' roads](#), 12 April 2016

¹⁵ DfT, [The future of lane rental](#), September 2017

¹⁶ DfT, [Road works: interim solution for lane rental](#), September 2017

¹⁷ DfT, [Summary of responses to consultation on an interim solution for lane rental and government response](#), December 2017

¹⁸ DfT, [Government response to consultation on the future of lane rental](#), February 2018

¹⁹ ['Grayling plans to put utilities under pavements to cut potholes'](#), *TransportNetwork*, 30 April 2018

²⁰ ['The sector reacts: Is Chris Grayling right about pavements and utilities?'](#), *TransportNetwork*, 2 May 2018

to create new products to help drivers avoid jams. It could see the latest data being shared via satnavs and app 'push' notifications to help motorists choose a new route.²¹

²¹ DfT press notice, [New digital service to minimise disruptive roadworks](#), 2 September 2018

3. Rights and duties on undertakers and street authorities

A brief outline of the statutory rights and duties on undertakers and street authorities is provided below. The [Department for Transport](#) and the [Highways Authorities & Utilities Committee UK](#) both have more detailed guidance and codes of practice that deal with these and other issues on their respective websites. For example, with regard to statutory safety requirements, undertakers must comply with a statutory Code of Practice '[Safety at Street Works and Road Works](#)'.

3.1 Notice

Under sections 54 and 55 of the 1991 Act and regulations made under them,²² undertakers are required to give three months' notice to the relevant street authority of their intention to commence works. The regulations include exceptions for: emergency and urgent works (which require notice as soon as possible and within two hours of starting work); minor works not involving the break-up of the street; and remedial works to a reinstatement not causing danger to users of the street (within three days of starting work).²³

Under section 58 of the 1991 Act a street authority which has carried out substantial road works in a street can place an embargo on utilities carrying out any street works in that street for one year after the completion of the road works.²⁴ Sections 49 and 50 of the TMA made two main changes to the embargo arrangements:

- to allow the one-year embargo period to be increased by a street authority in certain circumstances; and
- to extend the circumstances in which an embargo could apply, so that it could be imposed not only after substantial road works but also after substantial street works carried out by utility companies.

There are no specific regulatory requirements for undertakers to notify residents of the reasons for excavating pavements or roads. However, it may be a condition in certain authority areas where permit schemes are operating that undertakers provide advance publicity to residents of their intentions. There is also a national permit condition that requires undertakers to notify residents and businesses, but the condition is only meant to be applied where such notification is vital owing to the sensitivity of the location of the works.²⁵

Where street works involve a road closure or the imposition of certain other temporary traffic restrictions, a Traffic Regulation Order (TRO) is

²² SI 2007/1951

²³ op cit., [Street works co-ordination code of practice \(4th ed.\)](#), section 7.5

²⁴ the definition of what constitutes 'substantial' road works and the list of additional works which can be carried out during the embargo period are set down in [SI 2007/1951](#)

²⁵ [HL WPO 5716](#), 14 March 2017

needed under the [Road Traffic Regulation Act 1984](#). This legislation requires authorities to publish a notice in one or more local newspapers beforehand. They are also required to take other measures, such as placing notices along the affected street, if they consider it necessary to give adequate publicity to the order.²⁶ For more information about TROs, see the House of Commons Library briefing paper [Roads: Traffic Regulation Orders \(TROs\)](#).

3.2 Records

When a statutory undertaker or highway authority wants to carry out works in the street it will need to obtain records from other undertakers of the location of any apparatus which they may have buried nearby, to ensure that they do not damage that apparatus in the course of their works.

However, at present there are no duties laid on those finding unmarked or wrongly marked apparatus to find out who the apparatus belongs to, mark it on their own records or alert the highway authority to its presence. Section 80 of the 1991 Act, which provides for precisely these scenarios, has never been brought into force. In response to a PQ in November 2015 the Road Minister, Andrew Jones, said:

Some years ago, the industry considered how the requirements in section 80 might operate in practice if they were brought into force. I am aware that at the time, those undertaking street works felt that there would be challenges in identifying the asset owner and conveying the information in a way that would provide an accurate and reliable record for the future. This process could delay completion of the works, causing additional congestion to traffic and adding cost to the job. These consequences conflict with the aims of minimising disruption and cost in carrying out street works. The range of methods used to maintain records, and inconsistency in how the information could be conveyed raised concerns about the feasibility of doing this, and future liability issues.

No further consideration has been given to this matter recently.²⁷

3.3 Coordination

The efficient co-ordination of street works “enables differences between those competing for space or time in the street, including traffic, to be resolved in a positive and constructive way.”²⁸

Under sections 59 and 60 of the 1991 Act, highway authorities have a general duty to co-ordinate all street and road works on their networks and undertakers have a general duty to use their best endeavours to co-operate with such actions. The coordination machinery is set out in an October 2012 revised Code of Practice.²⁹ The TMA 2004 also places a

²⁶ [HL WPO 5716](#), 14 March 2017

²⁷ [HC WPO 16610](#), 20 November 2015

²⁸ DfT, [Street works co-ordination code of practice \(4th ed.\)](#), October 2012, p14

²⁹ DfT, [Street works co-ordination code of practice \(4th ed.\)](#), October 2012

Network Management Duty on local highway authorities to manage roads effectively to keep traffic moving.³⁰

Section 42(2) of the TMA clarified the law to make it clear that local authorities may give directions as to both timing and days. Furthermore, the street authority can, in certain circumstances, direct undertakers to follow a different route that would involve less disruption. These changes came into force on 1 April 2008.

3.4 Reinstatements

Sections 70-73 of the 1991 Act are concerned with the reinstatement once street works have been completed. In summary, the undertaker is responsible for the reinstatement of the road after street works have been completed and the regulations empower the street authorities to ensure this is done to an adequate standard. The specific obligations under the Act are detailed below:

- **Section 70 places the duty of reinstatement on the undertaker.** Under section 70(2) the undertaker is obliged to begin the reinstatement “as soon after the completion of any part of the street works as is reasonably practicable” and to complete the reinstatement “with all such dispatch as is reasonably practicable”. The undertaker has a duty under section 70(3) to inform the street authority on the day after reinstatement is complete that it is complete and whether the reinstatement is interim or permanent.
- **The standard of reinstatement is dealt with in section 71.** The undertaker is fully responsible for carrying out the work in compliance with the specification and failure to comply with the standard is a criminal offence subject to an unlimited fine. The materials to be used and the standard of workmanship for the reinstatement of the street are laid down in a Code of Practice.³¹
- **Under section 72 the street authority has the power to carry out such investigatory works** as appear to it to be necessary to check an undertaker’s work. If it is dissatisfied with the reinstatement of the street by the undertaker, the authority may serve notice on the undertaker to carry out remedial work within seven working days. If the undertaker fails to comply with the notice the street authority can carry out the work itself and recover the costs from the undertaker.³²
- The TMA introduced new **sections 73A-F** into the 1991 Act to **allow a street authority, in certain defined circumstances, to direct an undertaker not just to reinstate the particular part of the road disturbed by their works, but to resurface either the whole lane of that part of the road (half-width) or its full width.** Under these provisions, where the condition of a specific street has deteriorated sufficiently as a result of utility works and reinstatements, an authority can serve an undertaker

³⁰ [HL WPO 6619](#), 13 April 2017

³¹ DfT, [New Roads and Street Works Act 1991: Specification for the Reinstatement of Openings in Highways \(3rd ed. England\)](#), April 2010

³² DfT, [New Roads and Street Works Act 1991: code of practice for inspections \(2nd ed.\)](#), September 2002

with a 'resurfacing notice'. The area to be resurfaced need not be confined to the immediate area of the trenches left by previous reinstatements, although there are limits as to how large an area the undertaker could be required to resurface. In certain circumstances, however, the undertaker is entitled to ask the authority to carry out the work itself.

The cost of the resurfacing works can, in theory, be shared between the authority, the undertaker carrying out the works and any other undertaker whose reinstatements contribute towards the condition of the street. The 2007 Regulations³³ set out the detailed arrangements under which an undertaker can be directed in this way and include strict limits on the circumstances under which an authority is able to instruct an undertaker to carry out resurfacing, limits on the area of the street which has to be resurfaced and the materials to be used. The same Regulations determine how the costs of the resurfacing works can be shared between the various undertakers responsible for digging up the road up to that point and the street authority itself. They also allow for a process to be put in place under which an undertaker can appeal against being required to carry out resurfacing or to contribute to the cost of the works, or how disputes can be settled.³⁴

³³ SI 2007/1951

³⁴ an estimate of the cost of the various proposals is given in the RIA to the 2007 Regulations, see: DfT, [Regulatory Impact Assessment for Street Works \(Registers, Notices, Directions and Designations\)](#), 2007

4. Measures to manage street works

4.1 Fines for overstaying and other penalties

Companies must agree a time with the local authority to carry out work on the roads. Local highway authorities have the power to fine utility companies for “unreasonably prolonged occupation of the highway” under section 74 of the 1991 Act. This is defined as taking longer than the time agreed with a local authority to complete street works. If they overstay, they are penalised and have to pay a daily fine.³⁵

Reports on the effectiveness of these fines by the Halcrow Group in 2002, 2003 and 2004 revealed a mixed picture: while the total duration of works carried out seemed to decrease, utilities appeared to be overestimating the length of the job and/or increasing the time during the work in progress.³⁶

The current tariff is set out in the *Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) (Amendment) Regulations 2012 (SI 2012/2272)*, which came into force on 1 October 2012. These provide for a maximum charge for the busiest streets of £5,000 a day for the first three days of overrun and £10,000 a day thereafter. The Minister at the time said that he considered that the new charge level would “result in a decrease in the number of works which overrun their agreed period, and better reflect the congestion costs overrunning works impose on society”.³⁷

On fines more generally, the 1991 Act specified some two dozen offences for failing to comply with various duties (e.g. giving sufficient notice of work; carrying out resurfacing to a proper standard; ensuring that works are properly signed and guarded). The maximum fine for these offences was set at £1,000. Furthermore, as a maximum level, this meant that the fines that were actually handed out to offenders could be lower. From May 2008 section 40 of the TMA and regulations made under it³⁸ increased the maximum fines to either level 4 (£2,500) or level 5 (unlimited).³⁹ They also made some of the offences liable to fixed penalty notices (FPNs).

³⁵ legislated for by the *Street works (charges for unreasonably prolonged occupation of the highway) (England) regulations 2001 (SI 2001/1281)*.debated by the Commons Delegated Legislation Committee on [14 March 2001](#) and in the House of Lords on [30 March 2001](#)

³⁶ Halcrow Group for DfT, [Assessing Extent of Streetworks - Section 74 Powers](#), 2002, 2003 & 2004

³⁷ [HC Deb 13 March 2012. c16WS](#)

³⁸ [SI 2007/1952](#)

³⁹ Level 5 used to have a maximum limit of £5,000, this was changed from 12 March 2015 after the coming into force of section 85 of the *Legal Aid, Sentencing and Punishment of Offenders Act 2012*; for more details see: MoJ press notice, [“Unlimited fines for serious offences”](#), 12 March 2015

4.2 Permit schemes

Permit schemes are, in effect, schemes to book occupation of the street for specified periods for a specified purpose. Unlike the arrangements under the 1991 Act, whereby the promoters are entitled to occupation of the street and must simply notify the highway authority of their intentions, permit schemes:

- allow authorities to attach conditions to permits to impose constraints on the way that work is carried out and information is provided, allowing the authority to direct the timing of activities;
- allow authorities to vary the permit conditions (e.g. time extensions); and
- allow authorities to charge a fee to the statutory undertakers.⁴⁰

The TMA and the Permit Scheme Regulations made under it ([SI 2007/3372](#)) provided for the permit scheme and came into effect on 1 April 2008 and was accompanied by a new [Code of Practice](#).

Kent County Council received the first legal Order from the Secretary of State for Transport in 2009 to bring a permit scheme into legal effect. The first operational permit schemes came into effect in January 2010, with 17 London LHAs introducing the London Permit Scheme and Kent County Council introducing the Kent Permit Scheme.⁴¹ In its first annual report on the operation of the permit scheme, Transport for London (TfL) stated that in the year to January 2011 335,000 permits were granted.⁴² It reported that the scheme had resulted in:

- a significant increase in the number of recorded days of disruption saved through joint working and collaboration, saving some £2.7 million in congestion-related costs;
- a more than 200 per cent increase in the proportion of works that are formally recorded by highway authorities;
- a reduction in the total number of works undertaken by utilities of 17 per cent within permitting authorities as compared to only seven per cent in non-permitting authorities;
- better quality of information available to make considered coordination decisions; and
- benefits for average journey time and journey time reliability.⁴³

Since its introduction in 2010, the number of local highways authorities (LHAs) with a permit scheme has steadily increased, reaching a total of 95 Permit Authorities by September 2016, which represents 63% of the LHAs in England. The remaining LHAs continue to operate a notice regime, using the powers contained within the 1991 Act to coordinate and control works on their network.⁴⁴

There are a number of permit schemes in England, including those across [Greater London](#); [Kent](#); the [East of England](#); [St Helens](#); [Yorkshire](#); and [Greater Manchester](#).

⁴⁰ [Explanatory Memorandum](#) to SI 2007/3372, paras 7.5-7.7

⁴¹ Ecorys, [Evaluation of Street Works Permit Schemes – Annexes](#), July 2018, p10

⁴² TfL, [London Permit Scheme for Road Works and Street Works: First Year Evaluation Report](#), 2011, p5

⁴³ *Ibid.*, p6

⁴⁴ *Ibid.*

The permit scheme guidance was most recently updated in [October 2015](#).⁴⁵ This update came in response to a consultation to remove the need for the Secretary of State to approve local authority applications to run permit schemes.⁴⁶ The removal of the requirement to gain approval was provided for in section 51 of and Schedule 10 to the [Deregulation Act 2015](#) and came into force on 30 June 2015.⁴⁷

An [evaluation report, by Ecorys](#), was published in June 2018 by the Department for Transport and revealed that permit schemes have helped reduce the length of disruption from roadworks by more than 3 days and cut the number of overrunning roadworks.

4.3 Lane rental schemes

Lane rental schemes, which derive from section 255 of the [Transport Act 2000](#) that introduced new section 74A into the 1991 Act,⁴⁸ allow councils to charge utility companies to dig up the busiest roads during peak times when road works cause the most disruption. Companies would be able to avoid the charges by carrying out works during quieter periods or, if appropriate, at night.

The lane rental scheme had mixed success after it was originally introduced. Pilot schemes eventually took place in Middlesbrough and Camden between March 2002 and March 2004.⁴⁹ Interest in the scheme waned after Halcrow reported that the pilot schemes had little effect on the working practices of the undertakers: there was little incentive to avoid the charges as the regulators agreed they could be passed on to the customer.⁵⁰ The Transport Select Committee was also unenthusiastic about lane rental in its 2003 report into local roads.⁵¹

The Labour Government announced in 2009 that it intended to consult on new regulations for lane rental to operate on “the most sensitive roads in the most congested urban areas”.⁵² In August 2011 the Coalition Government published a consultation and draft guidance to councils outlining how lane rental schemes could be implemented.⁵³

⁴⁵ DfT, [Street works: the 2007 permit scheme regulations as amended in 2015](#), 6 October 2015; this followed a public consultation, see: [Street works permit schemes: complying with regulation amendments](#), 9 February 2015

⁴⁶ DfT, [Street works permit schemes: changes to regulations](#), 9 February 2015

⁴⁷ via Regulation 9 of the *Deregulation Act 2015 (Commencement No. 1 and Transitional and Saving Provisions) Order 2015 (SI 2015/994)*

⁴⁸ [HL Deb 2 November 2000, cc1131-41](#)

⁴⁹ DTLR, [Reducing disruption from utilities' street works](#), 14 August 2001, and [Lane rental pilot schemes consultation: summary of responses](#), 22 February 2002; *Street works (charges for occupation of the highway) (England) regulations (SI 2001/4060)*; debated in Delegated Legislation Committee on [10 December 2001](#); and: DTLR press notice, “[New schemes trialled to reduce road work disruption](#)”, 4 March 2002

⁵⁰ Halcrow Group for the DfT, *Monitoring of road rental projects: 1st annual report*, November 2003 [copy held in the House of Commons Library]

⁵¹ Transport Committee, [Local roads and pathways](#) (fifth report of session 2002-03), HC 407, June 2003, para 112; in a September 2011 report, the Transport Committee reiterated its scepticism of lane rental schemes (see: Transport Committee, [Out of the jam: reducing congestion on our roads](#) (ninth report of session 2010-12), HC 872, September 2011, para 47)

⁵² DfT, [Street Works Summit 15 October 2009: Report and Action Plan](#), October 2009, p12

⁵³ DfT press notice, “[Bringing an end to rush hour road works disruption](#)”, 22 August 2011; and: DfT, [Lane rental schemes in England: consultation](#), 22 August 2011

Transport for London (TfL) published a separate consultation on applying for a lane rental scheme.⁵⁴

In January 2012 the Government announced that there would be pilot schemes to trial the idea of lane rental in London and Kent, with each able to charge £2,500 a day to utility companies to dig up the busiest roads during peak times. It also published new guidance to local authorities wanting to put schemes in place.⁵⁵ In February 2012 the Government published the regulations to permit the £2,500 daily charge.⁵⁶

The first pilot scheme began in June 2012 across Greater London; the scheme applied to 200 miles of roads in the capital run by TfL.⁵⁷ A study of the scheme published in April 2014 found that:

Following the introduction of the scheme, around 90 per cent of utility works and 99 per cent of works carried out by Transport for London (TfL) in the lane rental areas have avoided disrupting these busy roads at peak times.

All the main utility companies are also now signed up to the use of rapid drying materials, considerably reducing the amount of time required to reopen roads and helping to save approximately 2,700 days of disruption across London.

All surplus money raised through the Lane Rental scheme is reinvested into measures to further reduce the disruption.⁵⁸

In August 2016 the Local Government Association called on the Government to make it easier for councils to be able to introduce lane rental schemes by removing the “cumbersome and bureaucratic” process of obtaining approval from the Secretary of State for Transport.⁵⁹

In September 2017, the Government sought views on whether the lane rental schemes in operation in London and Kent should continue and whether other local authorities should be allowed introduce lane rental schemes.⁶⁰

The 2012 regulations that enabled to the trial lane rental schemes included a 'sunset' clause which meant the London and Kent schemes would have ended in March 2019 unless the regulations were amended. The Government ran a separate but related consultation in

⁵⁴ TfL, [Proposed TfL Lane Rental Scheme](#), 23 August 2011

⁵⁵ DfT press notice, [“New powers for councils to control road works”](#), 26 January 2012; and: DfT, [Lane rental schemes: guidance to English local highway authorities](#), January 2012

⁵⁶ [Street Works \(Charges for Occupation of the Highway\) \(England\) Regulations 2012 \(SI 2012/425\)](#); the came into force on 14 March 2012 and will expire on 13 March 2019

⁵⁷ TfL press notice, [“Green light for London to charge utility companies who dig at the busiest times and cause congestion”](#), 11 June 2012

⁵⁸ TfL press notice, [“Mayor's lane rental scheme cuts roadwork disruption by almost 50 per cent at traffic hotspots”](#), 10 April 2014

⁵⁹ LGA press notice, [“Tough new powers called for by councils to tackle rush hour chaos caused by utility roadworks”](#), 13 August 2016

⁶⁰ DfT, [The future of lane rental](#), September 2017

parallel seeking views on whether to remove the sunset clause to extend the lane rental schemes in London and Kent.⁶¹

Following these consultations, the Government decided to proceed with removing the sunset clause⁶² and agreed to allow other local authorities to bid for and set up lane rental schemes as a way of reducing the impact of street works on the busiest roads at the busiest times.⁶³

New [lane rental scheme guidance](#) was published by the DfT in August 2018 and is for English local highway authorities who wish to develop proposals to operate lane rental schemes. It provides extensive information about the scheme, including guidance as to the conditions under which the Secretary of State is likely to approve (or not approve) a proposal to operate a lane rental scheme.

⁶¹ DfT, [Road works: interim solution for lane rental](#), September 2017

⁶² DfT, [Summary of responses to consultation on an interim solution for lane rental and government response](#), December 2017

⁶³ DfT, [Government response to consultation on the future of lane rental](#), February 2018

5. Compensation

In terms of general road works, where a highway authority carries out works under a statutory power or duty and performs these properly, there will not be any liability on the authority for any loss of business (see box below).

Road works and loss of trade

Owners of businesses have no right in law to a maintained level of passing trade. Temporary or permanent reductions in traffic flow are considered part of the risks of running a business. The owner of a business would only have a claim against the highway authority for road works (the Secretary of State in the case of trunk roads and the county council or unitary authority in the case of local roads) if the loss of business was a result of negligent action by the highway authority or contractor.

The then Conservative Government looked at the case for a general right to compensation when the [New Roads and Street Works Act 1991](#) was passed and opted not to make any changes to that effect.⁶⁴ Successive governments have taken the view that businesses should not have the right in law to any given level of passing trade, and that traders must take the risk of loss due to a temporary disruption of traffic flows along with all the other risks of running a business.

Utilities companies, however, operate under separate legislation that was drawn up when each was privatised back in the 1980s, therefore compensation for loss of business attributable to road works by a utility is payable only where the relevant statute authorises it and it will vary between utilities.

For example, section 180 and Schedule 12 of the [Water Industry Act 1991](#), as amended, and section 177 and Schedule 21 of the [Water Resources Act 1991](#), as amended, make provision for compensation for works done; the original provisions were contained in the [Water Act 1989](#), following a law case in 1979 between Thames Water and Leonidis which determined that 'losses' covered economic losses and therefore losses to profit.

Schedule 4(3) of the [Gas Act 1986](#), as amended, states that, in the course of placing pipes etc in the street, or from time to time repairing or altering these fittings, the undertaker may need to open or break up a street, drain or sewer, or remove earth in or under a street and that they should make compensation for any damage done. This was amended by the [Gas Act 1995](#) to insert a provision (Schedule 12(4)) that any loss sustained would be compensated by a sum determined under regulations.

Under the *Gas (street works) (compensation of small businesses) regulations 1996* ([SI 1996/491](#)) a gas company must pay compensation for loss of turnover sustained by a small business during a specified period of at least 28 days, in consequence of the works, except where the compensation would be less than £500 or would not exceed two

⁶⁴ [HC Deb 12 May 1994, c208W](#); further information on street works by public utilities can be found in HC Library standard note [SN/BT/739](#)

and a half per cent of the annual turnover of the business. The amount of the compensation is the difference between the profit (or loss) which would have accrued to the business but for the works and the reduced profit (or increased loss) which is a consequence of the works. A person must reserve the right to claim compensation within three months of the completion of the street works and submit supporting evidence within six months of their completion. This includes strict definitions as to the meaning of small businesses and their annual turnover.

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