



RESEARCH PAPER 03/92  
23 DECEMBER 2003

# *Traffic Management Bill*

**Bill 13 of 2003-04**

The Bill provides for the Highways Agency to appoint traffic officers to take over from the police responsibility for traffic on motorways and trunk roads. At the local level, each authority will be expected to appoint a traffic manager responsible for ensuring it meets its statutory duty to keep traffic flowing on their roads. It also provides a new regulatory regime for utility companies' street works (a permit scheme) and amends existing legislation to give highway authorities more effective controls over those works. The Bill allows for more civil enforcement of parking and moving traffic offences.

The legislation only extends to England and Wales.

Explanatory notes have been published separately as EN-13.

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## Summary of main points

The government's aim is to reduce the delays on the roads. The Bill gives powers to the Highways Agency and local authorities that will enable them to better tackle congestion. It follows publication of a discussion paper, *Managing our Roads*, in July 2003. This emphasised the effective management of the existing road network as a key element in the government's policy for roads, and trailed some of the contents of the Bill.

Consultation took place on the proposals relating to traffic management on trunk roads with the police through the Association of Chief Police Officers (ACPO). The department for transport set up a working group in January 2003 to include representatives of both street authorities and utility companies to discuss the other proposals in the Bill. The three relevant utility regulators (OFTEL, OFWAT and OFGEM) were also represented on the group.

The main points of the Bill are:

- To empower the secretary of state and the National Assembly for Wales ("the appropriate national authority") to designate individuals to act as traffic officers. Their duties will be to manage traffic on roads for which the national authority is the traffic authority. In addition to traffic management they will be able to carry out tasks such as monitoring the condition of the road and reporting on any defects or problems.
- To place a duty on every local traffic authority to manage its road network to secure the movement of traffic on their road network. The Bill requires that each local traffic authority appoint a traffic manager, so that there is a co-ordinated approach to network management. Their responsibilities could include co-ordination of utility companies' street works and the authority's own road works, managing parking provision, managing provision of public transport, ensuring that accurate information and advice is passed on to road users, and that incidents are cleared up as quickly as possible. If an authority proves unable to manage its network effectively, the Bill provides for the government to step in.
- To introduce a new regulatory regime for utility companies' street works known as a permit scheme and to amend existing legislation to give highway authorities more effective control over those works. They will have powers to specify which route road works should follow and decide what day of the week and at what times works can be carried out. There will be new powers to prevent roads from being dug up repeatedly by banning works on a particular road until a specified date. The fines for non-compliance are to be increased and some are to be subject to fixed penalty notices.
- To extend the civil enforcement of parking and moving traffic offences, such as ignoring banned turns or the rules at a box junction. These are powers that exist already in London, but are being extended to authorities in the rest of England and Wales. The government will have reserve powers to direct a local authority to apply for parking enforcement powers.



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## I Background

In the medium to long term the government aims to increase road capacity. It plans to widen roads such as the M1, M6, M25 and A1; is considering the introduction of road user charging (though not for at least ten years); and by improving public transport hopes that drivers will chose to leave their car at home. However these are long term solutions. In the immediate future it wants to improve traffic management and this Bill focuses on a number of areas on which the government believes that legislation can deliver a swift and significant impact on congestion and disruption on the roads. In particular it wants roads to be actively managed and the power to be available to limit the disruption caused by street works. In 1991 when the existing street works legislation was passed only a handful of utilities were permitted to dig up the road. However, there are now over 150 utilities able to conduct street works. The need for those utilities to build and maintain networks of apparatus beneath the street has led to a significant growth in the levels of disruption caused by street works over the last decade.

The government issued consultation documents on minimising disruption caused by utilities' street works in October 1999<sup>1</sup> and on decriminalised parking enforcement in December 2002.<sup>2</sup> In June 2003 it published a review detailing the case for transferring a range of traffic management tasks from the police to the Highways Agency.<sup>3</sup> It published a discussion paper, *Managing our Roads*, in July 2003.<sup>4</sup> This emphasised the effective management of the existing road network as a key element in the government's policy for roads, and trailed some of the contents of the Bill.

Consultation took place on the proposals relating to traffic management on trunk roads with the police through the Association of Chief Police Officers (ACPO). The Department for Transport set up a working group in January 2003 to include representatives of both street authorities and utility companies to discuss the other proposals in the Bill. The three relevant utility regulators (OFTEL, OFWAT and OFGEM) were also represented on the group. Motoring groups and the business community have stressed the need to focus on improving management and utilisation of existing infrastructure, the importance of more active traffic management and better control of street works and have welcomed the Bill.<sup>5</sup> However utility companies are less enthusiastic. The National Joint Utilities Group (NJUG) feels that the utilities are blamed for too many of the congestion problems. Works on the highway cause only 10 percent of

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<sup>1</sup> DETR *Reducing disruption from street works: a consultation document*, October 1999

<sup>2</sup> DfT *Road Traffic Act 1991: Decriminalised parking enforcement proposals for decriminalisation of additional parking offences outside London*, 6 December 2002  
[http://www.dft.gov.uk/stellent/groups/dft\\_localtrans/documents/page/dft\\_localtrans\\_507572.hcsp](http://www.dft.gov.uk/stellent/groups/dft_localtrans/documents/page/dft_localtrans_507572.hcsp)

<sup>3</sup> HA/ACPO *Roles and Responsibilities report*, 20 June 2003  
[http://www.highways.gov.uk/aboutus/corpdocs/r\\_and\\_r/2003/pdfs/ha\\_r\\_and\\_r.pdf](http://www.highways.gov.uk/aboutus/corpdocs/r_and_r/2003/pdfs/ha_r_and_r.pdf)

<sup>4</sup> DfT *Managing our Roads*, July 2003

<sup>5</sup> See, for example, RAC Foundation press notice 26 November 2003 *Don't dig there*; British Chambers of Commerce Chambers press notice November 2003 *Underwhelmed at Queen's speech*.

congestion and of these works, only half are carried out by the utilities: the other half are carried out by local authorities and highway agencies.<sup>6</sup> There is a danger that the provisions in the Bill could increase the cost of the services.

According to the regulatory impact assessment the provisions contained within the Bill are intended to be cost neutral for local authorities but the new regulatory regime for street works will impose additional costs on utility companies. Much of this part of the legislation is enabling and the detail will be introduced in subsequent secondary legislation so no cost estimates are yet available. The government has said it will consult on the regulations and additional regulatory impact assessments will be prepared.

The Transport Committee has published a short report on the present Bill, *The Traffic Management Bill*.<sup>7</sup> It had hoped that the government would allow it to consider the legislation in draft. There was no time for the committee to hold a special evidence session so it has drawn on work done in a previous inquiry, *Local roads and pathways*<sup>8</sup> and in its current inquiry into *Traffic law and its enforcement*.

## **II Traffic officers (part 1)**

Part 1 of the Bill (clauses 1 to 15) provides for the secretary of state for transport, in his capacity as highway and traffic authority for the strategic road network in England, to establish a uniformed on-road traffic officer service to manage the traffic consequences of random incidents (such as break downs, obstructions, debris and accidents) and manage programmed highway events such as the passage of abnormal loads. In practice the secretary of state carries out his functions as highway and traffic authority through the Highways Agency (HA), which is an executive agency of the Department for Transport (DfT), and the Highways Agency would be implementing this part of the Bill on his behalf.

The Bill similarly empowers the National Assembly for Wales (NAW), in its capacity as highway and traffic authority for the strategic road network in Wales, to establish a traffic officer service in Wales.

The Bill also enables some traffic management functions on motorways and other trunk roads currently carried out by the police to be carried out by the traffic officers. The Bill would give them powers to stop and direct traffic, and place and operate traffic signs to deal with incidents and keep traffic moving.

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<sup>6</sup> Highways Agency *Business Plan 2002-3*

<sup>7</sup> Transport Committee *Traffic Management Bill*, December 2003, first report 2003-04, HC 144

<sup>8</sup> Transport Committee *Local roads and pathways*, fifth report 2002-03, June 2003 HC 407



## **A. Current roles and responsibilities**

The information in this section is based on information contained in the Highways Agency/ ACPO report published in June 2003 on the transfer of traffic management tasks from the police to the Highways Agency.<sup>9</sup>

### **1. Control office**

The Highways Agency currently provides, maintains and upgrades a motorway communications infrastructure that is co-ordinated from around 29 individual local control rooms. The operation is provided by individual police forces. In most cases the motorway element is included in the overall control room operation. The exceptions to this are three police motorway control offices at Godstone, Perry Barr and Chigwell which provide a dedicated control facility.

A number of related initiatives have been undertaken to bring together control office functions in a single, regional control office structure, for example in the greater West Midlands area and around the M25. Here, six forces act together as part of an integrated police group and a new control office at Godstone in Surrey is likely to go ahead.

It is thought that implementing an integrated control office (ICO), whereby the network is jointly managed by both police and Highways Agency controllers would allow for a more strategic, co-ordinated approach to network management. In this context, decisions need to be made within the Highways Agency and in partnership with key stakeholders about how proposed ICOs are resourced, structured and organised, in particular the linkages to the traffic control centres (TCC), other emergency services and roadside service providers.

### **2. On-road activity**

The police and other emergency services currently attend all reported incidents, where the police exercise primacy as well as undertaking enforcement and other specialist functions. The Highways Agency, through contractors, provides engineering and road clearance facilities. Recovery agents, hazardous chemical specialists etc provide other services. A number of areas have introduced enhanced incident support units (ISUs) to improve response times. They are currently restricted in the activities that they undertake - minor repairs and debris removal for example. Legislation restricts ISUs from taking on greater responsibility, for example to direct traffic.

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<sup>9</sup> HA/ACPO, *Roles and Responsibilities report*, 20 June 2003. It is discussed in detail in the next part of the paper. [http://www.highways.gov.uk/aboutus/corpdocs/r\\_and\\_r/2003/pdfs/ha\\_r\\_and\\_r.pdf](http://www.highways.gov.uk/aboutus/corpdocs/r_and_r/2003/pdfs/ha_r_and_r.pdf)

### **3. Central functions**

Both the Highways Agency and the police currently undertake a number of off-line functions in support of the Highways Agency core network. These functions include, amongst others, contingency planning, standard and protocol setting, and development of codes of practice.

## **B. Review of roles and responsibilities**

### **1. Background**

*A New Deal for Trunk Roads in England* is one of a number of publications which spelt out more fully the policies in the government's transport white paper.<sup>10</sup> The document found that better use should be made of the transport infrastructure that is already in place, including providing clear and up-to-date information to help people choose the best route and by managing traffic on roads more effectively. In terms of economic performance, four priorities were identified:

- to tackle congestion on the trunk road network with a package of measures designed to maximise benefits to the economy and the environment;
- to improve the planning of trunk road maintenance so as to reduce the disruption to traffic flow;
- to improve journey time reliability and develop performance indicators to measure progress;
- to give priority, where appropriate on the network, to public transport and heavy goods vehicle traffic.

As part of this, the white paper set out proposals for traffic control centres in England.

In December 2001 the government published a white paper on police reform.<sup>11</sup> It addressed six key areas for change, including:

- better use of the time and skills of police officers and support staff. It was envisaged that this would involve further civilianisation of support functions, reducing police bureaucracy and increased police visibility. This could include functions transferring to organisations such as the Highways Agency. This is simply an extension of Home Office policy in developing the Community Support Officer role.
- making best use of science, technology and information technology. It was envisaged that this would include improving local and central criminal

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<sup>10</sup> DETR, *A New Deal for Trunk Roads in England*, 1998

<sup>11</sup> Home Office, *Policing a New Century: Blueprint for Reform*, December 2001.

intelligence systems and making more use of technologies such as CCTV and Automatic Number Plate Recognition (ANPR). If functions were to be transferred from the police to the Highways Agency, it was recognised that the potential to detect criminal activity must not be lost on the core network.

- improving linkages between the police and other bodies. Whilst the police liaise with a range of organisations, it was recognised that there could be closer working with other parts of the criminal justice system and other local organizations.

The ACPO roads policing strategy was published on 24 November 2002.<sup>12</sup> In this, ACPO confirmed that the police were looking to focus on core priorities. The following are extracts from this strategy:

The police will need not just to concentrate on core functions but also to shed unnecessary or inappropriate tasks. In particular we seek to withdraw from network management issues and to transfer these to the road operator and/or the private sector;

In terms of patrolling the network, ACPO recognises that there is a clear and justified public demand for a visible reassuring police presence on the roads. This is an end in itself, and will be pursued as such, but we will also seek to impact heavily on poor driver behaviour in general. This will also involve measures to increase visibility and the further development of collaborative working arrangements (such as the existing Central Motorway Police Motorway Police Group, CMPG), and we will seek partnership agreements with the road network operators in order to maximise our patrol effectiveness.

## 2. The review

In the light of the above strategy documents, a review of the roles and responsibilities in managing the strategic road network was commissioned jointly by the Highways Agency and ACPO. The review was conducted between June 2002 and November 2002. There were three ultimate objectives of this review:

1. To gain consensus about the range of services which should be provided to users of the Highways Agency core network
2. To identify which of these services is best provided by the police, the Highways Agency, or by an alternative supplier.
3. To establish the implications of any transfer of responsibilities between the police and the Highways Agency, and the consequences in terms of broad costs and organisational development.

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<sup>12</sup> ACPO *Modern Road Policing: a Manifesto for the Future*, November 2002

The report was published in June 2003 and detailed the case for transferring a range of traffic management tasks from the police to the Highways Agency.<sup>13</sup>

The review findings, conclusions and recommendations were derived from a combination of workshops (at both practitioner and senior manager/officer level from the Highways Agency and police), stakeholder consultations and desk research.

The review found that the current costs of police involvement in traffic policing were significant, but relatively little time was spent dealing with crime. The review combined police activity analysis data from 19 forces with information provided by Her Majesty's Inspectorate of Constabulary to estimate the level of policing devoted to the core network. In terms of on-road activity there were approximately 6,540 road police in England, and a proportion of this resource was devoted to the HA network – at a potential cost of £86m. Only around 15% of road police officers' time was found to be spent on crime related activity, whilst about 30% of their time was on non-crime incidents and 20% on patrol. On the other hand, the HA spent very little in terms of network operation.

Other findings were that the police currently managed and resolved the majority of incidents on the core network. However, in spite of a 12% rise in the volume of traffic between 1997 and 2001, the number of police officers nominally assigned to roads policing duties fell by 12% during this period. Evidence from practitioners indicated that the increase in the number of incidents, coupled with the decrease in police resources available to resolve them, was a contributory factor to an increase in congestion. The Highways Agency currently has a limited involvement in resolving such incidents. From a policy perspective, the current police reform agenda was driving the police to focus more on tackling criminality and less on non-core activities.

Similarly, the Highways Agency is tasked with becoming more proactive around its core objectives of improving safety and tackling congestion, including becoming a network operator. A recurring theme from the workshops was that the Highways Agency should take a greater role centrally in developing, agreeing with stakeholders and then specifying protocols and standards – initially for on-road resource. This would extend to ICO specification, contingency planning, including diversion routes, and might include the planning and coordination of abnormal loads. There was genuine frustration at the lack of performance measurement tools to monitor how well the network was operating.

The conclusions and recommendations of the review were:

The overall conclusion is that there is a strong case for transferring many of the ancillary tasks currently undertaken by the police that do not need specialist training and skills. This transfer is achievable, but needs to be carried out in the

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<sup>13</sup> HA/ACPO, *Roles and Responsibilities report*, 20 June 2003  
[http://www.highways.gov.uk/aboutus/corpdocs/r\\_and\\_r/2003/pdfs/ha\\_r\\_and\\_r.pdf](http://www.highways.gov.uk/aboutus/corpdocs/r_and_r/2003/pdfs/ha_r_and_r.pdf)

context of an agreed overall network operations strategy, with a clear and well-managed implementation. Some changes in legislation are required to facilitate the full transfer (Section 6).

To make the transfer effective the main recommendations are as follows:

1. The development of protocols agreed with the Association of Chief Police Officers (ACPO) and the HA on all aspects of incident management and control on the network;
2. An introduction of integrated control offices and a “Traffic Operations Service”;
3. A communications strategy to manage public expectations and improve HA branding in its new role;
4. Sufficient resources allocated to the network operator role - based on a fully costed business case;
5. The introduction of effective performance management systems and a network model to inform optimal deployment;
6. A phased introduction of change.

### **3. The Bill**

The Bill empowers respectively the secretary of state and the National Assembly for Wales ("the appropriate national authority") to designate individuals to act as traffic officers or to authorise another to do so (clauses 1 and 2). Traffic officers could thus either be employed directly or they could be employed by external service providers. During the early years of operating a traffic officer service in England it is expected that all traffic officers will be employees of the Highways Agency. In the longer term there is the option for contractors to provide them.

Traffic officers' duties will be related to the management of traffic on roads for which the appropriate national authority is the traffic authority or the performance of any of the authorities' other functions as highway or traffic authority for trunk roads. Thus for example, in addition to traffic management they would be able to carry out incidental or supportive tasks such as monitoring the condition of the road and reporting on any defects or problems. Clause 3 defines the roads over which traffic officers can carry out their duties. The clause provides that their jurisdiction may be limited to specific roads. This might be used where traffic officers are designated by service providers who have a contract to provide a traffic service for a specific area.

Traffic officers would be directed by or on behalf of the appropriate national authority. However, to prevent any potential conflict between their role on the ground and that of the police in dealing with traffic accidents or incidents, clause 4 empowers the police to exercise primacy. In practice, this means that the police may opt to deal with incidents themselves, with or without traffic officer support, or allow traffic officers to act without police involvement. This clause also provides that where traffic officers are contracted out, the appropriate national authority may still give them direct instructions.

**a. Powers of traffic officers**

Clause 5 sets out restrictions and limitations on the exercise of traffic officers' constabulary-type powers, referred to as "special powers". These powers may only be used to assist traffic movement, avoid danger to persons or traffic or prevent damage to the road or anything on or near the road or for incidental purposes. The special powers of traffic officers are set out in clauses 6, 7 and 9. Traffic officers will have the power to:

- stop traffic ;
- direct / divert traffic ;
- place and / or operate traffic signs ;
- place rolling road blocks ;
- remove or procure the removal of stationary, broken down or abandoned vehicles on the network ;
- escort abnormal loads or procure such escort;
- manage traffic at traffic surveys ;
- remove obstructions ;
- be exempt from and be able to authorise exceptions and relaxations from the motorway regulations (e.g. use of the hard shoulder).

Summary offences are created under the appropriate sections of the *Road Traffic Act 1988* to allow these powers to be enforced.

Currently the police have the prime statutory authority for directing traffic on public highways. Traffic wardens, as part of the police service, are empowered to direct traffic in certain circumstances. A limited number of authorised persons, including school crossing patrols, have power to stop vehicles for particular purposes. Vehicle and Operator Services Agency examiners, accredited under the *Police Reform Act 2002*, have powers to stop vehicles for the purpose of inspecting their roadworthiness.

**b. Report of the House of Commons Transport Committee**

As part of its current inquiry into *Traffic law and its enforcement*, the Transport Committee is exploring the proposal to appoint traffic officers. In its report on the Bill, the committee lists the concerns that have been suggested in the evidence taken by the committee:<sup>14</sup>

- Traffic officers will have responsibility for clearing wreckage rather than ensuring that offences have not been committed; as long as no one is hurt or seriously injured criminal behaviour may go unpunished;

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<sup>14</sup> Transport Committee *Traffic Management Bill*, December 2003, First Report 2003-04, HC 144

- The need to call in police to incidents where criminal behaviour is suspected may in fact add extra delay to the process on investigating and clearing incidents;
- The transfer of responsibilities may lead to an inappropriate reduction in the policing of the strategic road network;
- The transfer may lead to a tension between those with responsibility for keeping traffic moving and those with responsibility for investigating at the scene of road crashes.

The committee noted that *Road Accidents Great Britain: 2001* states that “studies show that the police tend to underestimate severity of injury because of the difficulty in distinguishing severity at the scene of the accident” but there is no reason to believe that traffic officers will be better able to assess the true extent of injuries. The committee was concerned that sites might be cleared when police investigations would be appropriate.

The committee suggested that ministers be questioned about the provision in clause 2(1) that allows an appropriated national authority to “authorize another person to designate individuals as traffic officers” and that in clause 2(5) which specifies that “a traffic officer designated under an authorization must be employed by, or by person providing services to, the authorized person”. The committee was particularly concerned to know why the government thought it was appropriate that traffic officers should be employed by contractors which the explanatory notes stated was a longer term option.<sup>15</sup>

The committee commented that the purposes for which the special powers of traffic officers may be exercised, listed in clause 5, did not include ensuring that breaches of law are drawn to the attention of the police. It recommended that ministers explained the extent to which the introduction of traffic officers may reduce emphasis on law enforcement in favour of maintaining traffic flow.<sup>16</sup>

The report drew particular attention to clause 8 of the Bill which gives national authorities the powers to give “further special powers” to traffic officers, and to create summary offences to allow those powers to be enforced. The committee believed that, although these powers would be subject to the affirmative procedure, there should be a thorough exploration of exactly what was proposed, and why they could not be identified now.<sup>17</sup>

#### **4. Costs and benefits**

The Regulatory Impact Assessment (RIA) of the Bill estimated total annual financial benefits at £98m, with the primary benefit being an estimated reduction in incident related congestion on the motorway network of 17%.<sup>18</sup> This is based on the estimate of the

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<sup>15</sup> *ibid*, para 5. Explanatory notes para 20.

<sup>16</sup> *ibid*, para 6

<sup>17</sup> *ibid* para 7

<sup>18</sup> DfT, *The Traffic Management Bill: Regulatory Impact Assessments*, December 2003

annual cost of congestion on the HA network of £3 billion. Estimates suggest that the equivalent of 550 police officers (worth £20 million per annum) could be freed up to deal with crime related issues, either on the road or elsewhere.

<b>Benefit</b>	<b>Explanation</b>	<b>Value</b>
<b>Improved journey-time reliability</b>	<ul style="list-style-type: none"> <li>■ improved incident detection times</li> <li>■ improved incident response times</li> <li>■ reduced overall duration of incidents</li> </ul>	<b>£67m/yr</b>
<b>Enhanced road safety</b>	<ul style="list-style-type: none"> <li>■ reduction in secondary accidents</li> <li>■ improvements in detection and clearance of debris</li> </ul>	<b>£10.5m/yr</b>
<b>Increased police focus on incident management and tackling crime</b>	<ul style="list-style-type: none"> <li>■ freeing of police time and resources from non-core activities</li> </ul>	<b>£20.5m/yr</b>
<b>Achieving broader Highways Agency and police objectives</b>	<ul style="list-style-type: none"> <li>■ intelligence on network performance to inform future improvements</li> <li>■ promoting choice and information for travellers</li> <li>■ better use of police time and skills</li> </ul>	<b>not quantified</b>

The RIA estimates a one-off capital investment and revenue cost of £72 million. This is spread over two to three years, which is the length of time during which the traffic officer service will be rolled out nationally. Annual running costs of the service and the regional control centres are expected to be in the region of £57m. Total capital and running costs equate to about 3% of Highways Agency annual expenditure and are accommodated within existing budgets.

<b>Cost</b>	<b>Major components</b>	<b>Value</b>
<b>One-off capital costs</b>	control centre technology control centre construction and refurbishment vehicle technology	<b>£49m</b>
<b>One-off revenue costs</b>	staff training and staff recruitment	<b>£23m</b>
<b>Highways Agency costs</b>	restructuring	<b>Not yet quantified</b>
<b>Annual revenue costs</b>	staff costs technology maintenance vehicle costs building lease, maintenance & operation	<b>£57m/yr</b>



### **III Network management by local traffic authorities (part 2)**

Part 2 of the Bill imposes a duty on all local traffic authorities to secure the expeditious movement of traffic on their road networks, and to facilitate the expeditious movement of traffic on other authorities' networks (clauses 16 to 31). Authorities are required to make arrangements as they consider appropriate for planning and carrying out the action to be taken in performing the duty: part of the arrangements must be the appointment of a "traffic manager".

If an authority is failing properly to perform its network management duty, or to make appropriate arrangements, then the Bill provides for the national authority (the secretary of state or the NAW) to appoint a traffic director for that authority. The national authority must, among other things, set out the objectives of the traffic director.

#### **A. Responsibility for roads in England and Wales**

Management of the road network is split between the Highways Agency, responsible for 4 per cent of the network including most of the motorways and the main strategic routes, Transport for London (TfL) and the London boroughs, responsible for the strategic network and local roads respectively in London, and 116 metropolitan district, unitary and county authorities who are responsible for the remaining roads within their boundaries. In Wales, the National Assembly is responsible for the trunk roads and motorways and unitary authorities for all other roads.

These authorities have a range of powers and duties under which they manage activities taking place on the network and the use of the network by different groups of road users. In particular, authorities have roles as:

- highway authority, under the *Highways Act 1980*, principally dealing with the infrastructure of the road network;
- street authority under the *New Roads and Street Works Act 1991*, principally dealing with utility street works;
- traffic authority under *Road Traffic Regulation Act 1984*, principally concerned with regulating the use of the road by different classes of users.

There are a range of activities which authorities carry out, utilising the powers conferred by the above Acts, which contribute to the overall management of the network, including:

- the co-ordination and management of utility works and local authorities' own works;

- the co-ordination and management of other planned activities that can temporarily take out capacity from the network. This can include skips and scaffolding associated with redevelopment, street fairs or state occasions;
- allocating road space between classes of road users within the context of different roads serving different functions across the network;
- utilising technology, such as Urban Traffic Management and Control systems, to co-ordinate traffic signals and using other information systems to help people to use the network efficiently and safely;
- making sure that the network is kept up to scratch - signals checked and adjusted regularly, road markings changed to reflect changes in traffic patterns, etc;
- monitoring the network and taking action to deal with, and to clear away quickly, incidents that disrupt the network, often in conjunction with the police.

## **B. Need for improved network management on the local road network**

The government does not believe that local traffic authorities manage their road networks as efficiently as they could. Demand from some authorities has prompted the introduction of new powers:<sup>19</sup>

Performance varies between authorities. Some networks are operated efficiently, with authorities actively involved in their management. In other cases, this may not be given a high priority, or the different parts of an authority may operate in separate compartments, or there is a lack of appropriate expertise; the result is a less efficient network with unnecessary congestion and delay.

The tools available to authorities to manage the problem rarely rest in just one part of the organisation. Some authorities have had real success in bringing these functions together in a way that allows a co-ordinated, evidence-based approach.

Demand from the more proactive authorities has led the Government to review existing powers and determine where changes are needed. Ministers' desire to manage our road network more efficiently has also led to extensive consideration of how to encourage all local authorities to rise to the standard of the best.

One sub-group of the working group set up by the government in early 2003 looked at traffic manager/traffic director proposals. Discussions subsequently took place within the traffic management board of the roads liaison group, where local authorities are represented, about the main principles of the proposals.

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<sup>19</sup> RIA, December 2003

The proposed measures in the Bill come in three parts:

### 1. The enhanced network management duty

Clause 16 places a duty on local traffic authorities to work with other authorities to facilitate traffic movement on their road network. The action an authority may take includes the exercise of any powers affecting the use of the network, whether or not those powers were conferred on the authority in their capacity as a traffic authority.

The government stated in the RIA that its intention is to underline the importance of proactive co-ordination and management across the network by creating an explicit new duty on authorities to secure the expeditious movement of traffic. This duty is not confined to any one role of an authority: it applies to all that it does affecting roads and the traffic (including pedestrians) using them. Associated with this new duty, the secretary of state will be able to issue statutory guidance on the execution of those duties, which could include guidance on performance indicators.

The Transport Committee repeats, in its report on the Bill, its comments from its report on *Local Roads and Pathways* which expressed concern about the notion that the free flow of traffic on the traffic network should always be paramount:<sup>20</sup>

We regret the implication that road traffic movement is more important than pedestrians, safety or the environment. Keeping traffic moving is important and already a key function of local authorities. It could and should be done better. However, it must be seen within the wider context of the Government's own Integrated Transport White Paper and within the policies and targets of each local authority.

The committee comments that “although the Bill recognises that local authorities have other obligations, policies and objectives, these are not defined and some may be non-statutory”. It concludes:<sup>21</sup>

We remain concerned that the statutory duty to secure the expeditious flow of traffic imposed by the Traffic Management Bill may take precedence over policies intended to improve conditions for pedestrians or cyclists, or to improve the environment. This would be inappropriate.

It is also concerned about the wide definition of “road network” which could be construed as including residential streets. It recommends that ministers should be queried on this:<sup>22</sup>

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<sup>20</sup> Transport Committee *Traffic Management Bill*, December 2003, First Report 2003-04, HC 144

<sup>21</sup> Ibid, para 9

<sup>22</sup> Ibid, para 10

10. We are also concerned that the definition of "road network" is extremely wide: it "means the network of roads which the authority is the traffic authority". This would appear to suggest that the duty to secure the expeditious movement of traffic extends to all streets, including residential streets. Clearly, this is in itself contrary to the Government's policy, and we are sure that there is no intention to allow the duty to keep traffic flowing to override policies designed to secure more pleasant residential areas, better facilities for pedestrians and cyclists and better road safety. Nonetheless, the Bill signally fails to make this clear, and we recommend that our colleagues probe Ministers on this point.

## **2. The appointment of a traffic manager**

All traffic authorities will be required to appoint a traffic manager as part of their arrangements for delivering the new duty. The precise structure around the traffic manager is not specified and is expected to vary between different authorities, according to how they choose to manage their affairs. The traffic manager could be someone already within the authority: it does not have to be an additional post. But the aim would be that the person would be a focal point within the authority, drawing together all the strands of activity that affect movement on the road network, ensuring co-ordination of the authorities' own activities and with others such as utilities.

The Transport Committee was concerned that the powers of local traffic authorities would be limited.

## **3. Enforcement of network management duties**

Where a local authority (or a group of authorities who were exercising functions jointly) was failing to exercise its network management duties properly, the proposed measures would enable the secretary of state to intervene in order to improve the authority's performance by appointing a traffic director operating outside the authority (or authorities) and reporting directly to him. The traffic director could operate in two ways:

- **In monitor and intervene mode**

In this mode the traffic director watches what the authority is doing and has the power to intervene and overrule them, if that is necessary to achieve the proper discharge of the network management duties (clauses 20 and 24).

- **In direct control mode**

In direct control mode, the traffic director takes over functions from the authority and operates them directly to fulfil the duties. Clause 25 provides that, where provided by an intervention order, he may exercise specified functions in place of the authority. Clause 30 provides that the secretary of state or National Assembly, as appropriate, may recover from an authority the expenditure it has incurred in appointing a traffic director to that authority (including expenditure towards any costs incurred by him after allowing for any costs that are met from other sources).

The Transport Committee was concerned that the freedom of local traffic authorities might be limited: in particular by what might be covered by guidance issued under clause 18 and the circumstances in which intervention could occur:

12. However, in practice traffic authorities' freedom is likely to be limited. They must have regard to guidance on the techniques of network management "or any other matters relating to the performance of the duties imposed by section 16 and 17". Clause 20 provides that "If the appropriate national authority considers that a local traffic authority may be failing properly to perform any of their duties under section 16 and 17 it may give a notice saying that it is of that opinion (an "intervention notice") to the authority". If the authority does not respond to the satisfaction of the national authority, a "traffic director" may be appointed, with powers to give directions to the local traffic authority, and the national authority will be able to recover from the local traffic authority the expenditure involved, including the costs incurred by the traffic director (Clause 30). The traffic directors will have considerable power, including power to override directions and guidance given by the Mayor of London under Part 4 of the *Greater London Authority Act 1999* (Clause 29).

13. We have already drawn attention to the possibility that the need to secure the free movement of traffic could take precedence over other desirable policy objectives. Local authorities have freedom to set their own objectives, and, as we said in our earlier report, they are "already judged through Best Value inspections and ultimately the ballot box". [7] The power to impose traffic directors should not prevent local communities making choices about the sort of road network they want. Clause 27 provides that "the appropriate national authority shall publish guidance about the criteria which it proposes to apply to the purpose of deciding whether to give an intervention notice or to make an intervention order". We do not believe that these powers should be given unless a draft of such guidance is available when the Bill is considered in standing committee. The imposition of a centrally appointed traffic director on a local authority should only occur in extreme cases, and ministers should be pressed to explain what such cases might be.

14. We recommend that our colleagues seek to establish:

- The extent to which local traffic authorities will retain freedom to manage their network as they see fit;
- What may be covered in the guidance issued under clause 18; and
- The circumstances in which an intervention order would be contemplated.

## **C. Costs and benefits**

The government listed the expected benefits in the RIA as follows:<sup>23</sup>

- congestion and pollution is reduced;
- business can operate more efficiently through the quicker and more reliable delivery of goods, service of customers etc;
- people can reach their destinations more easily, saving time and money;
- public transport can operate more easily, potentially further relieving congestion;
- more is made of the investment represented in the existing asset, and the need for more radical solutions is reduced.

The RIA did not attempt to quantify the benefits but reckoned that “even relatively modest improvements in network capacity of single figure percentages, as a result of these measures, would bring very wide spread and substantial benefits in any congested town or city.” Any costs created by this part of the Bill will be determined by local authorities themselves. They will depend on how the traffic manager fits into the existing structure.

## **IV Street works (parts 3 and 4)**

These two sections give highway authorities effective control over street works and introduce a new regulatory regime through the use of permit schemes. In 1991 when the existing legislation was passed only a handful of utilities were permitted to dig up the road. However, there are now over 150 utilities able to conduct street works. The need for those utilities to build and maintain networks of apparatus beneath the street has led to a significant growth in the levels of disruption caused by street works over the last decade.

The provisions for permit schemes in part 3 are enabling and the secretary of state for transport or the National Assembly for Wales (NAW) will have to introduce regulations setting out the framework and common features if they decide to activate the permit power in the Bill. Little detail is available as to what would be included. Where a body wishes to operate a permit scheme, it will have to apply to the secretary of state/NAW for permission. If ministers are content, the scheme would be formally approved by means of an Order.

Part 4 of the Bill amends the existing legislation to give highway authorities much greater powers to minimise unnecessary disruption caused by poorly planned works: authorities will be given more control over where and when works can and cannot take place, will be

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<sup>23</sup> RIA, December 2003 p 23

able to place longer embargoes to protect streets which are dug up again and again, and will have a more effective enforcement regime.

Both these sections are enabling and much of the detail will be introduced in subsequent secondary legislation. The government has said it will consult on the regulations and additional regulatory impact assessments will be prepared. However it admits that it is possible that the new regulatory regime for street works will cost utilities more than the existing regime.<sup>24</sup>

### **A. The NRSWA 1991**

Highway authorities have a duty to maintain their roads under the *Highways Act 1980*. This legislation also allows, with permission from the highway authority, skips, scaffolding and building materials on the highway.

The existing legislation governing the work of the public utilities is the *New Roads and Street Works Act 1991 (NRSWA)*. This 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 Horne report on roads and the public utilities published in 1985.<sup>25</sup> This had found that the uncoordinated activities of those concerned with carrying out works on the highway led to unnecessary traffic disruption and significant additional costs to the public. The enactment of *NRSWA 1991* was intended to reduce the disruption generated by the utilities' street works.<sup>26</sup> Three codes of practice were prepared by the highway authorities and utilities committee and approved by the relevant secretaries of state, to cover reinstatement, diversionary works, and co-ordination and co-operation. They have since been updated. In April 2001 the department and the Highway Authorities and Utilities Committee (HAUC) published *Best practice in street works and highway works*, to complement the codes of practice.

Street works carried out by public utilities and by cable companies are undertaken by virtue of a statutory right or a licence granted under the *NRSWA 1991* and do not need the prior consent of the street authority. Cable companies became statutory undertakings as a result of the licences issued to them by the secretary of state for trade and industry, under part II of

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<sup>24</sup> RIA 2003 p 6

<sup>25</sup> *Roads and Utilities: Review of the Public Utilities Street Works Act 1950*, November 1995, HMSO

<sup>26</sup> Library research papers were published on the Horne report, *Public Utility Works (The Horne Report)* House of Commons Library Research Note 90/51, 1 July 1990 and the Bill, *New Road and Street Works Bill* House of Commons Library Reference Sheet 91/3, 5 February 1991. Parts III and IV (the parts relevant to street works) were introduced by regulation during 1992 and 1993. Details of the Act were given in department of transport circular 1/93 April 1993.

the *Telecommunications Act 1984*.<sup>27</sup> This allows them to install and run their systems and gives them the authority to break open streets.

The main points of the Act are:

- The Act and associated regulations and codes of practice introduced new standards for the reinstatement of the road surface with utility companies being fully responsible for reinstatement following their street works.<sup>28</sup> This was to end the previous confused divisions of responsibility between street authorities and utilities. Both interim and permanent reinstatements must conform to the statutory specification. Thus undertakers executing road works must comply with prescribed material specifications and standards of workmanship when reinstating a road or footway and to guarantee the performance of the reinstatement for a minimum period of two years. Street authorities can carry out inspections of utilities' works, at their expense. All cases of defective reinstatement, which are identified by the local authority, must be rectified at the undertaker's expense. The undertaker must also, for each proven defect, bear the cost of the initial investigation and three further follow up inspections.
- The Act introduced better control over the timing and co-ordination of street works.<sup>29</sup> It established that local highway authorities have a general duty to co-ordinate street works, including their own road works, and that undertakers should co-operate with both the highway authorities and each other. Any construction company to whom a statutory authority has contracted out work must obtain a licence from the local highway authority. The highway authority may attach appropriate conditions to this licence in the interests of safety, to minimise inconvenience to those using the street, or to protect the structure of the street.

The highway authority cannot prevent a statutory undertaking from digging up the road but it can decide when the works should be done and it can prohibit the digging up of resurfaced roads, except for emergencies, within 12 months. Undertakers are required to give advance notice to the street authority of its planned works, other than minor works. The length of notice is prescribed in regulations and varies with circumstances. Under section 56 the highway authority has a power to give directions to undertakers in certain specified circumstances as to times when the works may and may not be carried out. The power does not apply to emergency works or to certain other urgent works for which no advance notice is required.

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<sup>27</sup> Unless otherwise specified in the licence itself, licence holders are covered by the telecommunications code contained in schedule 2 of the 1984 Act. Copies of the licences are publicly available from the library of the Office of Telecommunications (OFTEL).

<sup>28</sup> More detail in DfT and others *Specification for the Reinstatement of Openings in Highways*, 2<sup>nd</sup> edition June 2002

<sup>29</sup> More detail in DETR and others *Code of practice for the co-ordination of street works and works for road purposes and related matters*, 2<sup>nd</sup> ed. April 2001



Highway authorities have a duty to co-ordinate the execution of all works in the streets for which they are responsible. How this is done is a matter for them, but the original intention was to set up a computerised street and road works register.

- In addition every street work has to be carried out under a qualified supervisor and all street works have to be guarded and lit with properly installed traffic lights where appropriate.<sup>30</sup>

## **B. Consultation and subsequent amendments**

### **1. Reports and consultation**

The transport white paper of July 1998 promised consultation on ways to reduce the impact on traffic and pedestrians caused by street works for utility companies.<sup>31</sup> Consultation followed in October 1999 on what to do to reduce disruption caused by utility companies.<sup>32</sup> At the time the government's preference was not to introduce major new legislation but to use existing powers where they could be more effective. One power unused was the provision in section 74 of *NRSA 1991* to introduce a form of lane rental for utilities' street works. Respondents were asked whether the government should activate powers in section 74 of the 1991 Act to introduce a system of fines where utilities took longer to complete works than had been agreed, or whether new powers should be introduced, to allow for a 'full lane rental scheme' to charge utilities a daily fee for occupying the highway from the outset of any street works. Other suggestions emerged from the consultation that required primary legislation, for example tighter controls over when utilities' work can take place, the need for a stronger enforcement regime and longer and wider powers to embargo subsequent work.

The TRL report *Mitigating the disruption caused by utility street works* in 2001 found that the *NRSA 1991* had not led to a noticeable reduction in disruption due to utility works.<sup>33</sup> The conclusions were:

- The privatisation and proliferation of utility companies and re-organisation of local government has resulted in a totally different commercial state to that envisaged when the *NRSA* was drafted in the early 1980s.
- Because of higher levels of traffic and increased activity of utilities, the conflict between road users and utilities had probably increased since the Act was introduced. The low level of prosecution for defective or prolonged street works is not proof of the effectiveness of the Act.
- The fundamental aim of the Act to reduce disruption arising from street works has not been achieved.

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<sup>30</sup> More details in DfT and others *Safety at street works and road works: a code of practice*, January 2002

<sup>31</sup> DETR, *A new deal for transport: better for everyone*, Cm 3950 July 1998 para 3.104

<sup>32</sup> DETR, *Reducing disruption from street works: a consultation document*, October 1999

<sup>33</sup> TRL *Mitigating the disruption caused by utility street works*, TRL report 516, 2001

- There is evidence that the Emergency Powers of the Act are being abused.

The report concluded that further legislation was probably needed:

Pilot lane-rental schemes for street works are to commence in the UK in 2002. However, it seems likely that further legislation will be necessary to satisfy the government's stated objective 'of reducing the impact on traffic and pedestrians caused by street works for utility companies.

The TRL study also carried out an international review of the policies and practices adopted for street works. This found that in the countries covered by the review, Germany, France, Scandinavia, USA, Japan, Hong Kong and Singapore, utilities have far less freedom to undertake street works than they do in the UK.

In January 2003 the department set up a working group including representatives of both street authorities and the utility companies to consider a range of legislative options. It also included the three relevant utility regulators, OFTEL, OFWAT and OFGEM. Three subgroups were set up to look at various proposals in more detail including one to look at changes to the enforcement regime. Later highway authorities and utility companies were invited to comment on the options under consideration. A discussion paper, *Managing our Roads* was published in July 2003.<sup>34</sup> The proposals for a permit system and strengthening the powers of local authorities to manage utility works were included in the paper.

## **2. Fine for overstaying, section 74**

On 5 April 2000 the government announced plans to fine utilities, under section 74 of *NRSWA 1991* if they took longer than a time agreed with the local authority to complete street works.<sup>35</sup> The *Street works (charges for unreasonably prolonged occupation of the highway) (England) regulations 2001* were laid on 27 February 2001 and came into force on 1 April 2001.<sup>36</sup> Companies have to agree a time with the local authority to carry out work on the roads. If they overstay, they are penalised and have to pay a daily fine. A revised code of practice on co-ordinating street works was issued at this time,<sup>37</sup> along with guidance on best practice.<sup>38</sup> Section 74 allows charges to be levied only on utility companies and the power does not extend to works carried out by highway authorities. The revised code, however, applies to both utilities and work carried out on behalf of local highway authorities and the Highways Agency.

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<sup>34</sup> DfT *Managing our Roads*, July 2003

<sup>35</sup> DETR news release 283, *Government to fine go-slow road diggers*, 5 April 2000

<sup>36</sup> SI 2001/1281 The regulations were debated by the select committee on delegated legislation on 14 March 2001 and in the House of Lords on 30 March 2001 HL Deb cc543-8.

<sup>37</sup> DETR, *Code of practice for the co-ordination of street works and works for road purposes and related matters*, 2<sup>nd</sup> edition April 2001

<sup>38</sup> DETR, *Best practice in street works and highway works*, April 2001. This is also available on the Department's site at: <http://www.street-works.dft.gov.uk/bestpractice/index.htm>

Where a highway authority chooses to impose overstay charges on utility companies under section 74, the authority may keep the money received to meet the cost of operating the scheme and can spend any surplus on policies promoting safe, economic and integrated transport facilities in its area.<sup>39</sup>

The government appointed the consultants, the Halcrow Group to measure the effectiveness of the powers under section 74.<sup>40</sup> The initial report, *Assessing the extent of street works and monitoring the effectiveness of section 74 in reducing disruption*, found that the total duration of works carried out appeared to decrease except perhaps in the electricity sector, but the difficulties of obtaining sufficient data in the period meant that it would be unwise to attach too much importance to the findings. It suggested that many companies responded to the charges for overstaying by digging a series of small holes that could be filled in quickly if work fell behind schedule, rather than a single large one. The effect was to cause worse traffic congestion than before.

The second report found that the utilities appear to be overestimating the length of the job and/or increasing the time during the work in progress. The authorities are not challenging the estimates. It found:

- There are twice as many excavations per month from the water sector compared to gas, telecoms or electricity sectors.
- These other sectors display similar levels and patterns of activity.
- The utilities have increased the estimates of time that their work will take to avoid charges, but the authorities are not challenging the estimates.
- The report estimates that there are at least 1.1 million street works per year
- Utilities appear to be over-estimating the duration of major and standard works by at least 35% and up to 50% more than the actual durations of these works
- The overestimate exceeds the actual duration by up to 50%.
- Co-ordination is weak as most authorities are unable to monitor, challenge and co-ordinate because of limited resources and bad management.

Halcrow is to monitor the rules every six months.

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<sup>39</sup> PQ HC Deb 15 April 2002 c 739w

<sup>40</sup> The initial report was placed in the House of Commons Library 28 November 2002, the first annual report on 14 October 2002 and the second in October 2003.

### 3. Lane rental section, section 74A

In addition to implementing section 74, the government announced powers to allow for the introduction of a full lane rental scheme.<sup>41</sup> On 2 November 2000 Lord Macdonald introduced a new clause to the *Transport Bill 2000*. He explained the clause as follows:<sup>42</sup>

... we fully recognise that it may be necessary to introduce further measures if the Section 74 arrangements do not result in a sufficient reduction in the present level of disruption. So, we shall be reviewing the situation to see whether further measures may be required; for instance, a lane rental scheme allowing highway authorities to charge undertakers from the outset of works, even where these do not overrun an agreed deadline.

New Clause 295 provides for regulations to implement such a lane rental scheme. But it does not attempt to set out every last detail on the face of the Bill. Should we decide that we wish to activate this power, we shall want to consult extensively with interested parties, including highway authorities and utilities, on the detailed arrangements. The 1991 Act already requires undertakers to notify highway authorities about the execution of works. We envisage additionally that any lane rental scheme would be underpinned by a requirement for undertakers to produce formal notices informing authorities of each of the key dates for individual works. So, for example, they would have to produce a notice announcing the actual start date of works and another stating the date on which the reinstatement of the road surface was completed. These notices would allow the authority to calculate the rental charge for which the undertaker was liable.

We should make it clear that should we decide to introduce regulations activating the power to operate lane rental schemes, authorities will not be forced to put such a scheme in place in their area. After all, it is quite clear that the disruption caused by street works is a greater problem in some parts of the country than in others. Given this, subsection (2) makes it clear that authorities wishing to proceed with a scheme will need to submit details of it to the Secretary of State or the Welsh Assembly, as appropriate, for approval. In considering whether to approve a scheme, we shall want to satisfy ourselves that authorities are acting responsibly and that the detail of the scheme is commensurate with the disruption caused by street works in their area. It would not be acceptable, for example, if it became clear that an authority's motive in introducing a scheme was purely to raise extra revenue for itself.

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<sup>41</sup> Individual MPs and peers had attempted to introduce legislation. The most successful was Lord Peyton. He had a debate on the powers of statutory undertakers and others to dig up the road on 5 April 2000. On 15 May 2000 he introduced a Private Members Bill to make provisions for charges for the occupation of a maintainable highway by undertakers executing street works, which had its second reading debate on 30 June 2000. It would have introduced a new section 74 into the 1991 Act that would have required an undertaker executing street works to pay the highway authority £1,000 per day.

<sup>42</sup> HL Deb 2 November 2000 cc 1131-1141

While it is our intention to address the detailed arrangements for lane rental in regulations, the amendment does set out some of the issues that we shall want to cover there. These might include, for instance, the level at which charges should be set, and how these would vary according to the location, extent and timing of works. We should also want to set out what exemptions there might be from a requirement to pay lane rental charges, for instance for emergency works which have to be carried out at very short notice. Whatever the detailed arrangements for operating the lane rental scheme might be, should the Government decide to proceed to laying regulations these will be subject to affirmative resolution. Noble Lords will, therefore, have the opportunity to scrutinise the proposals in detail at that stage.

The power to introduce lane rental, to be used should the section 74 powers not work, became section 255 of the *Transport Act 2000*.<sup>43</sup> Consultation on regulations to permit pilot schemes to test the powers was launched on 14 August 2001 and a summary of the responses were published on 25 February 2002. Regulations to permit pilot schemes were introduced in December 2001<sup>44</sup> and in March 2002 the London borough of Camden and Middlesborough borough council began two such pilot schemes.<sup>45</sup> The authorities are permitted to keep the proceeds of the charging scheme. The pilots are scheduled to continue to March 2004 and further regulations would be required to make these powers available to all highway authorities.

The government appointed Halcrow to measure the impact of the lane rental powers in the two pilot areas. Its first report, covering the 11 months to February 2003, was published in November 2003.<sup>46</sup> It found the rental schemes had little effect on the working practices of the undertakers, as there is little incentive to avoid the charges as the regulators have agreed they may be passed on to the customer. Section 74 charges on the other hand may not be passed on.

The Transport Committee is not enthusiastic about lane rental. In its report on *Local roads and pathways* it concluded:<sup>47</sup>

24. We do not believe that lane rental offers a sensible way to reduce disruption caused by street works. The works undertaken by utilities are necessary. The objective of any charging scheme should be to charge for inefficiency in carrying out the work, not for carrying out the work in the first place. The overrun charging system (section 74) already provides a mechanism to achieve these objectives and should be made to work properly. (Paragraph 112)

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<sup>43</sup> Now section 74A of *NRSWA*

<sup>44</sup> The *Street works (charges for occupation of the highway) (England) regulations* SI 2001/4060. The regulations were debated by the select committee on delegated legislation on 10 December 2001. The RIA was published by the department on 23 January 2002.

<sup>45</sup> DTLR news release 81, 4 March 2002

<sup>46</sup> Halcrow Group Ltd *Monitoring of road rental projects, 1<sup>st</sup> annual report* March 2002-April 2003, November 2003. Copy held in the House of Commons Library.

<sup>47</sup> House of Commons Transport Committee *Local roads and pathways*, June 2003 HC 407

## C. The Bill

### 1. Part 3: Permit schemes

The government decided that if the best use was to be made of the road network, it was vital that those responsible for maintaining the network were able to have effective control over it. It concluded that in certain circumstances this could best be achieved through a permit scheme providing a more comprehensive system of controls. The exact scope of the powers could be varied from one area to another according to the scale of the problem. New York has a similar scheme although the government has said it does not intend to duplicate this but to allow different schemes in different areas.<sup>48</sup>

The New York scheme was described to the transport committee:<sup>49</sup>

In New York, any utility wishing to dig up the road has to obtain a separate permit for each of its works. Permits are issued to co-ordinate construction whilst minimising the impact on pedestrians and motorists. The New York City Department of Transportation issued over 172,000 permits in the financial year 2002. There are 111 inspectors who enforce the rules and regulations. There are 71 different types of permits in total, 46 of which are types of street opening permits, others include: building operations, sidewalk construction and canopy permits". [186]

Fees are currently between \$135 and \$380 for 15 or 30 days depending on the business of the street. The permits stipulate where and when the work may be carried out. [187]

Clauses 32-38 of the *Traffic Management Bill* provide a general framework for the introduction of permit schemes by the secretary of state in England, and the NAW in Wales. The detail will be set out in regulations that will be subject to the negative procedure in Parliament (clause 38(4)).

A permit scheme is defined as a scheme which “is designed to control the carrying out of specified works in specified streets in a specified area” (clause 32) and can include:

- the type of works which do and do not require permits and the occasions where works can be carried out without the issue of a permit (for instance in the case of emergencies);
- the conditions which can be attached to the grant of a permit;
- the arrangements for reviewing or varying permits that have already been issued.

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<sup>48</sup> *The government's response to the report Local roads and pathways*, October 2003 Cm 6007 p 12

<sup>49</sup> House of Commons Transport Committee *Local roads and pathways*, June 2003 HC 407, para 113-5

A permit scheme could provide a more comprehensive and standardised system of controls on how and when activities are carried out than are available under the current sets of controls. For example it could cover the following, all of which are already subject to a range of controls over how and when they are carried out. A permit scheme would simplify the procedures.

- road works by highway authorities to maintain existing roads or construct new features or new roads;
- street works by utility companies to maintain their apparatus or install new apparatus;
- skips placed in the street, for instance by building contractors;
- scaffolding which encroaches on to the highway, e.g. from adjacent building sites;
- works carried out by bridge authorities, for instance British Waterways, which may encroach onto the highway;
- works by transport authorities, for instance those involving the building of new light rail schemes;
- various smaller-scale activities under the *Highways Act 1980*, such as placing piles of building materials (e.g. sand or bricks) in the highway alongside other works.

All schemes have to be approved by the secretary of state or the NAW and the sort of groups that may prepare a scheme include:

- highway authorities (including local authorities, Transport for London and the Highways Agency);
- several highway authorities acting together over a wider area (e.g. a scheme covering the whole of the West Midlands);
- a traffic director which has been imposed upon a highway authority (as provided for in part B of the Bill);
- such other relevant bodies as were set out in regulations.

The government see the introduction of permit schemes as not only leading to reduced congestion and disruption, but also providing an opportunity for a reduction in bureaucracy, by streamlining a number of different powers.<sup>50</sup> There are risks that the introduction of the schemes could create additional bureaucracy, require more staff than the present regime, and that unnecessary costs could be imposed on utilities and others. Exactly how a scheme would work will depend on the detail to be included in future regulations. These will determine how widespread is the use of permit schemes and their scope. At present there is no way to quantify the costs or the risks though the government has promised a further RIA will be produced at the time any regulations are introduced.

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<sup>50</sup> RIA 2003 p 34

Such regulations will contain a detailed framework for the operation of schemes and the different activities which would require permits.

Nor is it clear how the introduction of permit schemes will interact with existing charges that can be made by authorities where utilities conduct works in the street, notably lane rental and overrun charges.

## **2. Part 4: Street works**

This section amends parts of the *NRSWA 1991*. Certain areas have continued to cause problems, in particular the quality and speed of reinstatements, the notice given of forthcoming work and the co-ordination of the work. Most of the detailed changes will be made in regulations. Changes to the *Highways Act 1990* are covered in part 5 of the Bill.

### ***a. Enforcement***

Halcrow noted in its reports on section 74 and lane rental that undertakers do not appear to be deterred by penalties particularly as local authorities often do not impose them and are often reluctant to spend time and money pursuing offenders through the courts. *NRSWA 1991* specifies some two dozen offences for failing to comply with various duties. They include, for example, giving sufficient notice of work, carrying out resurfacing to a proper standard, and ensuring that works are properly signed and guarded. All the offences are criminal ones and are prosecuted via Magistrates' Courts. The offences involve a maximum fine of level 3 (£1,000). This has not changed since 1991. Furthermore these are maximum levels and the fines that are handed out to offenders may be lower. Figures produced by the Local Government Association suggest that there have been fewer than 200 prosecutions under part III of *NRSWA* over the past 10 years, The average fine in these cases, where the undertaker was found guilty, was some £400.<sup>51</sup>

Clauses 39 increases the maximum fines to either level 4 (£2,500) or level 5 (£5,000). The offences and the proposed penalties are listed in schedule 1 of the Bill.

The government has also decided to make some of the offences liable to fixed penalty notices (FPNs). These are listed in schedule 2. Ministers would be able to remove or add offences from the list by making an Order to be approved by Parliament. A fixed penalty notice is in effect a temporary stay of prosecution and allows an individual to agree to a fixed penalty and subsequent immunity from prosecution for the offence. You have a certain number of days grace to decide. A person may choose to elect for a court hearing during this period, in which case proceedings would be brought against him in due course. At the court hearing he will be convicted or acquitted as in any other criminal case. The fixed penalty

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<sup>51</sup> Quoted in the Bill's RIA, December 2003 p 42



system is considered to be a quick and simple way of dealing with offences while preserving the right of individuals to challenge an alleged offence in court.

The procedure in this case is described in schedule 3. An authorised officer of the street authority would have to issue the FPN within a fixed time of the completion of the particular works to which the offence related. Assuming that it did not wish to contest the notice, the undertaker would have to pay the full penalty within 29 days of the day the FPN was served upon them. The full penalty would be set in regulations, but could not be higher than 30% of the maximum fine set out in NRSWA (e.g. £750, where the maximum fine was level 4 - £2,500). If the offender paid within 15 days of the issue of the FPN, they could pay a discounted rate. Again, the discounted rate would be set in regulations, although it could not be more than 25% of the maximum fine set out in NRSWA (e.g. £625, where the maximum fine was level 4).

The details of the FPN scheme will need to be set out in separate regulations and include:

- who the penalty is paid to and in what manner it is paid;
- how much is the penalty and what is the discounted rate;
- what use the street authority will be permitted to make of the money collected in penalties;
- what the arrangements are for undertakers to contest and appeal against FPNs.

#### ***b. Notice and co-ordination***

*NRSWA 1991* sections 54-60 cover notice and coordination. These gave new powers to highway authorities to co-ordinate utility street works, backed by new requirements for the utilities to give advance notice of such works. Undertakers are required to give advance notice to the street authority of its planned works. The length of notice is prescribed in regulations and varies with circumstances but is usually one month. They are also required to give notice of their starting date, usually seven days. Different requirements exist for different types of roads and types of work. Exceptions are allowed for urgent works (as soon as possible and within 2 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 (3 days notification). A revised code of practice that strongly emphasised the need to limit the use of emergency powers to genuine emergencies was published in April 2001.<sup>52</sup>

Local authorities have the power to give directions as to timing under section 56 – “the authority may give the undertaker such directions as may be appropriate as to the times when the works may or may not be carried out.” As currently drafted it is unclear whether this section allows local authorities to simply direct the time of day (e.g. to start

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<sup>52</sup> DETR *Code of practice for the co-ordination of street works and works for road purposes and related matters*, 2<sup>nd</sup> edition April 2001

after the morning rush hour) or to direct which days work can be undertaken. Clause 42 (2) clarifies the law to make it clear local authorities may give directions as to both timing and days. The clause also allows the authority to make directions covering work that has already commenced (the existing legislation only applies to proposed work).

Furthermore the street authority will be able, in certain circumstances, to direct undertakers to follow a different route. At present the undertaker has complete autonomy over the route, but may not be well placed to judge the disruption different routes might involve. If the work involves new apparatus, an alternative route exists and that alternative would involve less disruption, the street authority may direct the undertaker to alter its route (clause 43).

The detailed rules for both these clauses will be set out in regulations. The detail will largely determine the benefit (the more effective planning and co-ordination of works) and the cost (whether the delay will increase costs to operators, affect customers and whether the authorities behave reasonably in making the directions). The government has promised to consult interested groups when drawing up the regulations and to publish a further regulatory impact assessment.<sup>53</sup>

Legislative provision for the control and co-ordination of street works was made in sections 59 and 60. The street authority (usually the local highway authority) is responsible for co-ordination of its own works, as well any work carried out by public utilities and cable companies in its area. Section 59 requires the street authority to use its “best endeavours” to coordinate street works and section 60 requires that the undertakers should use their best endeavours to co-operate with the street authority and with other undertakers. The present co-ordination machinery is set out in a code of practice published under the Act and updated in 2001.<sup>54</sup> The minor changes proposed in the Bill clause 41 would extend this duty to include temporary activities on the highway such as the placing of skips or scaffolding.

Further changes to allow local authorities more control are made in clauses 49 and 50. Under section 58 of the *NRSWA 1991* a street authority which has carried out substantial road works in a particular 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. Substantial road works are likely to cause major disruption to road users, businesses and local residents and this gives them 12 months respite from any further disruption. Furthermore if a road is dug up by undertakers shortly after a street authority carries out a major resurfacing, the life span of the road will be shortened. The exceptions to this embargo are for emergency works, specific works which the street authority has agreed to let the undertaker carry out

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<sup>53</sup> RIA December 2003 p 40

<sup>54</sup> DETR, *Code of practice for the co-ordination of street works and works for road purposes and related matters*, 2<sup>nd</sup> ed. April 2001. <http://www.street-works.dft.gov.uk/cop/>

and such other works as may be prescribed in regulations.<sup>55</sup> However, at present embargoes can only be placed on any road for one fixed length of time, regardless of how much disruption future works on those roads would cause to the public. This means, for example, that a busy road in the centre of a major city is treated no differently from a rural road that carries little traffic.

It is proposed to make two main changes to the existing arrangements:

- to allow the one year embargo period to be increased by a street authority in certain circumstances. These circumstances would be set down in regulations issued by ministers (clause 49);
- 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 (clause 50 and schedule 4).

The detailed arrangements for allowing street authorities to set longer embargoes and to impose embargoes after major street works would be set out in separate regulations, to be produced after consultation with street authorities, undertakers and other relevant bodies. A street authority would not be allowed to set whatever embargo period it liked: the regulations would lay down a maximum period. The regulations will also need to address the arrangements for ensuring that undertakers were given sufficient advance notice of the embargo so that any necessary works could be completed before the embargo came into force.

The Transport Committee made specific recommendations on this topic in its report on *Local roads and pathways*.<sup>56</sup> It wanted local authorities to have stronger powers to direct the timing of the work and that the period of protection of resurfaced works should be longer. HAUC is proposing the notice requirements should be increased and this would be done through amending the code of practice on co-ordination.<sup>57</sup>

### **c. 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. Section 80 of *NRSWA* states that where the person carrying out works in the street discovers apparatus belonging to an undertaker whose location is either not marked or is wrongly recorded, they must take reasonable steps to inform the owner of the apparatus where and what it is and whether it appears to be still in use. If,

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<sup>55</sup> 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 the *Street Works (Notices, Directions and Designations) Regulations 1992*

<sup>56</sup> House of Commons Transport Committee *Local roads and pathways*, June 2003 HC 407

<sup>57</sup> *The government's response to the report Local roads and pathways*, October 2003 Cm 6007 p 10

however, they cannot find out who the apparatus belongs to, they must mark its location on their own records (if they are an undertaker) or inform the street authority for that street as to what and where the apparatus is (if they are not an undertaker). If they fail to carry out these duties, they are liable, if convicted, to a fine of up to £1,000.

Section 80 has never been activated, so at present there are no duties laid on those finding unmarked or wrongly marked apparatus. The main reason it has not been activated is that there is a general consensus that the duties currently set out in section 80 are too rigid and are potentially too great a burden on the person finding the apparatus, especially given the fact that it is not their fault that the apparatus was unmarked or wrongly marked in the first place.

The government does not wish to place any burden on the finder of the unmarked apparatus but a failure to legislate would mean a continued risk that an operator might damage unrecorded apparatus buried in the street. It therefore proposes to amend section 80 to allow regulations to be made that would allow a practical and effective regime to be developed that was not too burdensome to the operators (clause 46). Again no detail is included in the present legislation but the regulations will be consulted upon and a RIA will be issued.

#### *d. Reinstatements*

Sections 70-73 of the *NRSWA 1991* are concerned with reinstatement. The essential problem is that the highway authority has a duty to maintain the highway and may be liable to civil action where a highway that is badly repaired caused injury. However a highway authority cannot be held responsible for faulty works carried out by an undertaker. A point therefore has to be clearly defined as to when the responsibility for the highway surface returns to the highway authority after the completion of street works. Section 70 places the duty of reinstatement on the undertaker. 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 standards is a criminal offence that can presently attract a penalty up to a level 3 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. There have been serious doubts about the standard of many reinstatements. The reinstatement specification was reviewed by HAUC and a new version published in June 2002,<sup>58</sup> coming into operation on 1 July 2002.<sup>59</sup> 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. In September 2002 the department of transport

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<sup>58</sup> DfT and others *Specification for the Reinstatement of Openings in Highways*, 2<sup>nd</sup> edition June 2002 <http://www.street-works.dft.gov.uk/specification/>. The Scottish Executive published similar specifications in October 2003.

<sup>59</sup> *The Street Works (reinstatement) (amendment) (England) Regulations 2002* SI 2002/1487

and HAUC published the *Code of practice for inspections*.<sup>60</sup> The street authority also has the power under section 72, if it is dissatisfied with the reinstatement of the street by the undertaker, to serve notice on the undertaker to carry out remedial work within 7 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.

Clauses 51 and 52 introduce flexibility into the arrangements by allowing specific time limits and information to be prescribed in regulations rather than the primary legislation.

The more important changes are in clauses 53 to 55, which insert new sections 73A, B and C into *NSWRA*. The undertaker is only obliged to reinstate the street to the condition in which they found it: they are not obliged to improve it. Over time a series of reinstatements on a particular street, often carried out by several different undertakers, can look ugly and affect the strength and lifespan of the road. A DfT study estimated that the average cost of resurfacing built-up principal roads is somewhere in the region of £100,000 per km.<sup>61</sup> However, whilst resurfacing is expensive, it can obviate the need for considerably more expensive reconstruction of a road later on if problems with that road have not been addressed. To that extent, resurfacing offers better value for money. The government take the view that those who play a part in shortening the life of the road and undermining its visual appearance contribute towards remedying the detrimental effects they are responsible for.

As a result, it proposes to amend *NRSWA* to allow a street authority, in certain defined circumstances, to direct a 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 the new provisions, where the condition of a specific street had deteriorated sufficiently as a result of utility works and reinstatements, an authority would be able to serve an undertaker with a "resurfacing notice" (clause 53). This could require the undertaker to reinstate either the whole lane or the whole width of the road. The area to be resurfaced need not be confined to the immediate area of the trenches left by previous reinstatements, although there would be limits as to how large an area the undertaker could be required to resurface. In certain circumstances, however, the undertaker would be entitled to ask the authority to carry out the work itself.

The cost of the resurfacing works would in theory be able to be shared between the authority, the undertaker carrying out the works and any other undertaker whose reinstatements had contributed towards the condition of the street (clause 55). The exact formula for calculating the division of costs (including whether certain parties should not

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<sup>60</sup> DfT and others *Code of practice for inspections*, 2<sup>nd</sup> edition September 2002.

<sup>61</sup> Quoted in the RIA, December p 65

be liable for any cost), which would depend upon a range of factors, for instance the condition of the road, would need to be set down in regulations.

The Bill allows for regulations to set out the detailed arrangements under which an undertaker could be directed in this way and would include strict limits in the circumstances under which an authority was able to instruct an undertaker to carry out resurfacing, limits on the area of the street which had to be resurfaced and the materials to be used (clause 54). Regulations would determine how the costs of the resurfacing works could be shared between the various undertakers responsible for digging up the road up to that point and the street authority itself. They would also allow for a process to be put in place under which an undertaker could appeal against being required to carry out resurfacing or to contribute to the cost of the works, or how disputes could be settled (clause 55).

As much as can be known of the costs and benefits of the proposals are set out in the RIA as follows:<sup>62</sup>

#### **Costs**

As stated above, the details of when and how authorities will be able to direct an undertaker to resurface part of a road and how the costs of resurfacing works would be apportioned would be set down in regulations. Given this, it is not possible to provide any accurate figures at this stage for the likely overall costs imposed by a resurfacing regime. A full assessment will be carried out at the time any regulations are prepared. However, it is possible to provide an idea of the kind of costs involved in individual cases.

The costs of reinstating the road surface after works will vary according to a number of factors, including size and materials used. However the Transport Research Laboratory has estimated that the average cost of a reinstatement is some £34 or £54 per square metre for rural and urban locations respectively.

It is possible to give some idea of the size of areas that may need to be resurfaced under the full or half width provisions compared to a reinstatement. The following example assumes a 5 metre length of reinstatement with a width of 0.5 metres (this is not meant to represent all reinstatements but is assumed to be a reasonable example for our purposes). Using these dimensions the total area covered would equal 2.5 square metres. If resurfacing was carried out for the same 5 metre length and covered half the width of a two lane road (again this is an example and widths will vary) we would expect the width to be 3.65 metres, so the total area covered would be 18.25 square metres. If all the width of the road was covered the total area would be 36.5 square metres.

Using the above reinstatement as an example it is therefore possible to estimate that a half width resurfacing could cover seven times the area of a reinstatement,

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<sup>62</sup> RIA December 2003 p 67

whilst a full width would cover approximately fifteen times the area. These ratios will of course vary according to the size of the reinstatement and the road widths. However the costs in terms of overheads, labour, time and materials would not increase at exactly the same rate. Generally the smaller the job the more expensive it is likely to be per square metre compared to a larger job. For example, there are likely to be proportionate cost savings as the size of the area is increased.

Where local authorities have introduced high quality streetscapes, such as Home Zones and pedestrian areas, new surfacing materials may have been used and the costs of resurfacing may be higher. Where successive trenching has occurred it may well have affected footways, footpaths, cycle tracks and cycle lanes. Trenching along these networks can have more of an impact on foot and cycle users than poor work on the carriageway on drivers and car passengers.

The cost of managing traffic (e.g. using mobile traffic signals) whilst the works are taking place is also an important consideration. This is likely to be greater for half-width and full-width surfacing than for smaller reinstatements.

### **Risks**

There is a theoretical risk that a highway authority might use the power to direct resurfacing as a way of getting undertakers to pay for resurfacing work that the former would have carried out as part of their normal maintenance programme. In other words a way of getting their road network resurfaced "on the cheap". In order to avoid this risk, it is crucial that any regulations defining the exact circumstances under which the power could be used are tightly drawn so that factors such as the maximum area that can be resurfaced, the criteria for dividing the costs of works, appeal mechanisms against decisions and procedures for settling disputes between an authority and an undertaker are clearly set out.

Full or half width reinstatements will inevitably cover a larger section of the road than the reinstated areas which they are intended to cover. Also, the period of occupation of the road space in order to carry out resurfacing will often be greater than the period of occupation to simply carry out a reinstatement. Given that, asking an undertaker to carry out a, say, half width resurfacing after carrying out its works in the street is likely to be more disruptive to road users than simple reinstatement work would be. However, balanced against this is the fact that at some stage the highway authority would anyway have had to resurface the road with all the disruption that this would bring. The short to medium term need for such works would be reduced where a full/half width reinstatement was carried out.

We recognise that under the provisions undertakers carrying out works in a street will not always know if these works may render them liable for resurfacing costs in the future. This will depend upon the size and frequency of the reinstatements that had already been carried out in that street or that followed on from their own works. Those undertakers that are able to make use of trenchless technology will be less affected by this measure as their works will affect smaller areas of roads than those undertakers who use open cut techniques. The size of the equipment installed could affect the size of the area of reinstatements, and hence any

subsequent costs for resurfacing. It is possible that gas, water and electricity companies may, therefore, be affected more by this provision than telecommunications ones. The possible implications of this would need to be examined in drawing up any regulations.

The NJUG is unhappy about this proposal. It argues that full resurfacing of roads, over and above the area where works have taken place, will, in all likelihood, increase congestion and disruption with the duration of the works lengthening. There is also a potentially negative impact upon the reputation of the companies involved who may be required to resurface roads on behalf of the local authority but still appear to the public to be responsible for the disruption of traffic flow for an extended period.<sup>63</sup>

In its report, *Local roads and pathways*, the Transport Committee proposed bringing forward powers through section 78 of *NRSWA* to take account of the long term damage caused by excavations.<sup>64</sup> In its response to the committee the government was not convinced.<sup>65</sup> It quoted the study by the TRL to assess whether trenches caused long term damage to roads.<sup>66</sup> The report suggested that there was some evidence that trenching a road led to cracking of the road surface and an increased level of defects even when the standard of the reinstatement conformed to that laid down in the code. However it did not appear to lead to a significant reduction of the road's life as long as the defects were rectified. The department was considering a further study to gather more evidence.

## **V Highways and roads (part 5)**

Part 5 of the Bill includes provisions to amend the *Highways Act 1980*, to provide for regulations to apply 'lane rental' charges to skips, scaffolding, building materials and temporary excavations that occupy the highway (clauses 56 to 67).

This part also includes measures to alter the arrangements for traffic management in London. These include provisions for the secretary of state for transport to designate a network of strategic roads (and for changes to that network to be made by the Assembly or the mayor of London acting on its behalf). The purpose of designating this network is to enhance TfL's powers in relation to borough roads by enabling it to object to proposals that would affect strategic roads.

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<sup>63</sup> NJUG *TMB briefing for second reading*, 22 December 2003

<sup>64</sup> House of Commons Transport Committee *Local roads and pathways*, June 2003 HC 407, recommendation 20

<sup>65</sup> *The government's response to the report Local roads and pathways*, October 2003 Cm 6007 p 10

<sup>66</sup> *Long-term performance of reinstated trenches and their adjacent pavements. Part 1: Literature review, Part 2: Long-term performance of reinstatements in the highway*. TRL Reports 572 and 573, (Crowthorne 2003)



## **A. Skips and scaffolding**

### **1. Current legislation**

Under sections 139 to 140A of the *Highways Act 1980* it is against the law to deposit a builder's skip on a street without the permission of the highway authority for that street. The permission may have various conditions attached by the authority.

Section 169 of the 1980 Act requires that a person obtains a licence from a highway authority before erecting scaffolding or any other structure which obstructs the highway in connection with building or demolition work or altering, cleaning, repairing or maintaining a building. Again, the authority can attach such conditions to the licence as it sees fit. Under section 171 of the Act a person may deposit building materials or rubbish in the street, or make a temporary excavation, if consent is given by the highway authority. This consent may also be subject to such conditions as the highway authority thinks fit.

Section 140A of the Act (inserted by schedule 8 of *NRSA 1991*) allows regulations to be brought in which would permit street authorities to impose a daily charge on the owner of a skip where the skip was not removed from the highway by an agreed deadline. It also provides for the skip owner to give estimates of how long they expect the skip to be in place and for the revision of estimates and the calculation of charges owing where overruns occur. Section 171A allows for similar charges relating to scaffolding and materials etc on the highway which is not removed by the agreed deadline. These are parallel powers to those under section 74 of *NRSA 1991* allowing authorities to charge statutory undertakers whose works overrun an agreed deadline. The charging powers for utility works were activated from April 2001 and are available to any highway authority in England that wishes to operate them. The overrun charging powers for activities under the *Highways Act* have not been activated.

As has been pointed out in section IV, the *Transport Act 2000* also introduced new powers which would allow authorities to charge undertakers from the first day of works, regardless of whether the works overran or not, commonly known as "lane rental". Whilst the *Transport Act* applied the revised arrangements for overrun charging and the introduction of lane rental to utility works, it did not extend them to cover activities under sections 139, 169 and 171 of the *Highways Act* (skips, scaffolding, temporary excavations and building materials). This will be done by the present Bill.

The government believes that a failure to legislate in this area alongside legislation on street works, would ignore the fact that skips, scaffolding and building materials placed in the highway can cause as much disruption on the roads as utility works.

### **2. The Bill**

Clause 62 substitutes a new section 140A into the *Highways Act 1980*, to provide for a widening of the regulation making powers in respect of builders' skips. The new section

140A is reasonably similar to section 74 of *NRSWA 1991* as amended by the *Transport Act 2000*. It allows the secretary of state to make regulations requiring the owner of a builder's skip deposited on a maintainable highway to pay a charge to the highway authority in cases where the period of the occupation of the highway exceeds an agreed period. The authority will set the rate of charge up to a prescribed maximum and failure to comply will be a level 4 offence (attracting a maximum fine of £2,500).

Clause 63 inserts a section 140B in the *Highways Act 1980* to confer a power, by regulations to make provision for "lane rental" in relation to the placing of a skip on a highway maintainable at public expense.

Similar rules are introduced for scaffolding, building materials and excavations (clause 64).

Other clauses introduce provisions that already exist for the utilities but not for others working in the street. Undertakers operating under *NRSWA* must ensure, among other things, that their works are adequately signed, guarded and lit and the secretary of state may issue guidance as to their responsibilities in this respect (section 65). Section 174 of the *Highway Act 1980* places similar requirements upon persons executing works in a street (other than persons executing street works) but there is no provision for the secretary of state to issue guidance to persons and highway authorities in respect of the requirements. Clause 67 inserts a new power into section 174 of the *Highways Act 1980* to enable this to be done.

The Bill introduces fixed penalties for certain offences under the *Highways Act 1980*. These include such offences as depositing a skip on the highways without permission of the highway authority, failure to light a skip properly, mixing mortar on the highway etc (clause 60 and schedules 5 and 6 introduce a new schedule 22A to the *Highways Act*). Schedule 6 includes the content of the fixed penalty notice, the amount of penalty and the period of payment.

The department has consulted with organisations representing the skip and scaffolding hire and construction industries but further consultation will be held if and when the government brings forward regulations to activate the charging powers.

### **3. Street apparatus**

Clause 61 is similar to clause 46 in part 4 of the Bill applying to statutory undertakers. It enables the secretary of state or the NAW to make regulations imposing a duty upon a local highway authority to make and keep a record of the location of any object of a description prescribed in the regulations which is placed by that authority in the street. The regulations may also make provision as to the form of the records, and supplementary information to be included in the record, and may require authorities to make their records available for inspection.

## **B. Strategic roads**

Under the *Greater London Authority Act 1999* the Greater London Authority (GLA) acquired responsibility for a London road network with TfL as the traffic authority for these roads. This network comprises some former motorways, primary routes and red routes, some 580 kilometres in all. There are now three categories of road within London: those sections of the national motorway network within Greater London - M1, M4, M11 and M25 managed by the Highways Agency, the TfL road network (TLRN) managed by the GLA and all other roads which are the responsibility of the individual boroughs.

TfL has identified what it considers a network of strategic roads which includes all GLA roads, 1,246 kilometres of borough principal roads and some other roads which are at ends of red routes, making 2,000 kilometres of roads in total. These strategic roads comprise 16 per cent of the roads in Greater London but carry 75 per cent of the traffic. Many of these roads cross highway authority boundaries and TfL considers therefore that careful co-ordination between highway authorities is needed when roadworks are being planned because uncoordinated roadworks can cause particular traffic congestion on these roads.

This part of the Bill allows the secretary of state (in clause 56) or the mayor of London (in clause 57) to designate by order borough council roads which are currently not part of the TLRN as strategic roads. Under clause 57 the GLA may also direct by order that a road should cease to be a strategic road. Clauses 58 and 59 of the Bill amend section 301A of the *Highways Act 1980* and section 121B of the *Road Traffic Regulation Act 1984* respectively. These two pieces of legislation are those which require a London borough council to inform another highway or traffic authority where a London borough council is exercising powers so as to affect another authority's roads.

## **VI Traffic and parking enforcement (parts 6 and 7)**

The Bill provides for the extension and rationalisation of existing powers enabling the civil enforcement by local authorities of driving and parking contraventions.

### **A. Existing legislation**

The move echoes those taken in the *Road Traffic Act 1991* (RTA) part II. That legislation decriminalised most non-endorseable parking offences (mainly parking on yellow lines and in parking spaces) in London and contained the provision to extend it to other areas. The principal idea behind the *Road Traffic Act 1991* was to give local authorities complete responsibility for all "permitted" parking. Formerly, local authority parking attendants could only deal with collecting parking meter charges and issuing excess charge notices: all other permitted parking offences come into the area of criminal law so had to be administered by the police and their traffic wardens. By removing all permitted parking from the criminal law and making it a civil matter, it was possible to allow local

authority parking attendants to administer it. Local authorities now decide what to do, administer the scheme and keep all the income from it. Guidance is issued by central government, but the responsibility for the schemes rests with the local authorities.

Where local authorities have assumed responsibility for on-street parking under this Act, penalty charge notices (PCNs) are issued by local authority employed parking attendants. The local authorities are able to keep the fees from parking meters, charges associated with wheel clamping and vehicle removal and the money from the new penalty charge notices. Penalty charges are ultimately enforceable through the civil courts as civil debt.

The then government did not consider that it would be appropriate to allow local authorities responsibility to take on "prohibited" parking. Thus endorseable offences and those relating to obstruction that were still subject to criminal sanctions continued to be the responsibility of the police. The powers of the police appointed traffic wardens were extended so they could take responsibility for enforcing the law on endorseable offences as well as the non-endorseable as previously. The money from penalties associated with this group of offences continued to go to central government.

Despite the introduction of the decriminalised parking enforcement (DPE) schemes in London being regarded as a success, the initial take up of the new powers outside London was slow. Local authorities wishing to introduce the new system apply to the secretary of state to create a Special or Permitted Parking Area (SPA or PPA) that defines the area to be covered. They are expected to meet the minimum requirements laid down in the *Guidance on Decriminalised Parking Enforcement outside London*.<sup>67</sup> There was a lot of concern as to the economics. Although a few areas (Westminster for example) make large amounts from their parking, others only just break even. Local authorities were encouraged by the allocation in September 1998 of £100,000 by the DfT (then the DETR) towards the cost of setting up a new permanent adjudication service for areas outside London.<sup>68</sup> The lack of such a service was initially a barrier to many areas taking on responsibility for parking. They were also encouraged by the raising in 2001 of the upper limit of the penalty charge notices to £60.<sup>69</sup> A number had complained that the previous level of £40 made it hard for them to balance their accounts. There are now over 80 authorities outside London operating DPE powers and more are expected in the future.<sup>70</sup> With police forces increasingly distancing themselves from an interest in parking enforcement more councils may soon have no choice but to introduce their own SPAs.

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<sup>67</sup> Department of transport local authority circular 1/95 "Guidance on decriminalised parking enforcement outside London" 1995.

<sup>68</sup> Manchester City Council was the lead authority and financed the start up costs with the help of the department. The *Road traffic (parking adjudicators) (England and Wales) regulations 1999* no 1918 outlined the procedures for appeal and came into force 27 July 1999

<sup>69</sup> *Local Transport Today*, 14 June 2001

<sup>70</sup> DfT *Road Traffic Act 1991: Decriminalised parking enforcement proposals for decriminalisation of additional parking offences outside London*, 6 December 2002

The scope of civil enforcement of traffic offences was extended by the *London Local Authorities Act 1996* which gave London authorities the power to issue penalty charges in respect of vehicles driven illegally in bus lanes. These powers were first exercised in 1999. Section 144 of the *Transport Act 2000* empowered the relevant national authority to make regulations to enable approved local authorities outside London to undertake the civil enforcement of bus lanes. Powers in the *London Local Authorities and Transport for London Act 2003* enable civil enforcement of certain moving traffic regulations, such as use of box junctions.

The government consulted on decriminalising additional parking offences outside London in December 2002.<sup>71</sup> Schedule 3 to the *RTA 1991* enables the secretary of state by order to add to the list of parking offences enforceable in a PPA/SPA outside London. Some authorities outside London approached the department about the possibility of extending the scope of DPE contraventions. This is because DPE has highlighted the offences, such as parking at taxi stands and parking on or near pedestrian crossings (an endorseable offence), which are not always effectively enforced by the police who do not give priority to parking enforcement. Another problem where the police are not always able to act is in dealing with double parking, which is basically an offence of obstruction.

The government proposed to amend schedule 3 to decriminalise:

- Parking at taxi stands
- Parking offences during special events
- Parking on pavements in the cities of Hereford and Worcester
- Parking in bus stop clearways.

These proposals will be covered in regulations made under the present Bill. It agreed that local authorities outside London should be given the same powers as London to cover double parking. The government did not feel that the enforcement of controlled areas at zebra crossings should be decriminalised.

## **B. The Bill**

### **1. Civil enforcement**

The powers being sought in the *Traffic Management Bill* will provide a single body of primary legislation enabling civil enforcement of parking, bus lanes, specified moving traffic regulations and the London lorry ban. Clauses 68-88 and regulations made under them will, for the most part, replace existing provisions in national and London local

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<sup>71</sup> DfT *Road Traffic Act 1991: Decriminalised parking enforcement proposals for decriminalisation of additional parking offences outside London*, 6 December 2002  
[http://www.dft.gov.uk/stellent/groups/dft\\_localtrans/documents/page/dft\\_localtrans\\_507572.hcsp](http://www.dft.gov.uk/stellent/groups/dft_localtrans/documents/page/dft_localtrans_507572.hcsp)

legislation. They will also enable regulations to be made giving authorities outside London civil enforcement powers to cover some moving traffic offences (such as ignoring the rules at box junctions and banned turns) on the basis of camera evidence or the statement of a civil enforcement officer, and giving additional powers in respect of parking enforcement in areas outside London equivalent to those which already exist in London. In due course the regulations will replace the existing powers in the *Road Traffic Act 1991*, the *Transport Act 2000* and *London Local Authorities Acts*.

Regulations will be made in respect of parking enforcement to give authorities outside London the additional powers that have been conferred on London authorities by the *London Local Authorities Acts 1995* and *2000* enabling:

- postal service of a penalty charge notice (PCN) where a parking attendant is prevented from fixing it to a vehicle or handing it to the driver;
- issue of a PCN on the basis of information provided by a camera;
- issue of a PCN for parking within the area of a pedestrian crossing;
- creation of a contravention to deal with double parking; and
- placing a 6-month time limit on the issue of a notice to an owner aimed at securing payment of a penalty charge if it has not been paid within 28 days of issue of the PCN.

The secretary of state or the NAW will be able to make regulations for the imposition and payment of penalty charges for traffic contraventions that are subject to civil enforcement (clause 68). Clause 69 and schedule 7 set out the contraventions which are subject to civil enforcement. These are contraventions of parking and waiting restrictions, orders establishing bus lanes, specified moving traffic offences and the London lorry ban. The appropriate national authority can make regulations adding to the lists of parking contraventions and moving traffic contraventions. Contraventions which would lead to licence endorsement may not be added to the list of moving traffic contraventions.

Clause 70 and schedule 8 establish the geographical areas where civil enforcement can be practised. All areas where decriminalised parking enforcement has been introduced under the *Road Traffic Act 1991* will become civil enforcement areas for parking contraventions. The whole of Greater London will be a civil enforcement area for contraventions relating to parking places (paragraph 2 of schedule 7). The whole of London will also be a civil enforcement area for bus lane contraventions. Outside London the secretary of state/NAW will be able by order to designate additional local authority areas as civil enforcement areas for enforcement in respect of parking or (in existing civil enforcement areas for parking) bus lane or moving traffic contraventions.

Authorities wishing to take on civil enforcement powers will incur costs in terms of setting up an enforcement operation, including processing of penalty charge notices, either in house or through employment of a contractor for this purpose. They will need facilities and staff to consider representations from those who have incurred penalties, to deal with appeals to adjudicators and to take enforcement to secure payment of penalties.

Where cameras are used to detect bus lane or other moving traffic contraventions authorities will need to meet the costs of installation of detection cameras and monitoring facilities.<sup>72</sup>

## 2. Reserve powers of compulsion

A power is sought in the Bill to give the relevant national authority a reserve power to direct a local authority outside London to apply for civil parking enforcement powers (clause 71). Section 43 and schedule 3 to the *Road Traffic Act 1991* enable local traffic authorities to apply to the relevant national authority for decriminalised parking enforcement (DPE) powers so they can take over enforcement of parking from the police. The process involves the making of an order designating an authority's area as a permitted parking area and special parking area (PPA/SPA).

A drive behind applications for PPA/SPA orders is the low priority accorded to parking enforcement by the police service. In some cases police forces have simply decided to pull out of parking enforcement. Parking enforcement was one of a package of ancillary tasks which the Policing Bureaucracy Taskforce chaired by Sir David O'Dowd identified as suitable for transfer to local authorities thereby allowing the police to concentrate on their core activities.<sup>73</sup> Against this background the government considers that authorities who have not already done so should be thinking about the introduction of civil enforcement powers in their areas. It is desirable that the introduction of civil parking enforcement is properly planned so there is an orderly transfer of responsibilities from the police and a lead time of around 18 months is needed for this purpose. To encourage wider introduction it is proposed to give the relevant national authority a reserve power to compel an authority to make an application for designation of their area as a civil enforcement area (CEA) for the purpose of enforcement of parking contraventions if they have not already done so. However, it is not intended that a common deadline should be set for introduction of civil parking enforcement by all authorities.

The reserve power sought would enable the national authority to issue a Notice to Apply ("Notice") to an authority specifying that they must apply for a CEA parking order, the deadline for it coming into force and the geographical extent of the order. Prior to this the national authority will be required to formally indicate to an authority that it intends to issue a Notice to enable it to make representations that a Notice should not be served, to propose alternative dates for making an application or the deadline for a CEA parking order coming into force, and to propose a different geographical extent for the area to be covered by an order. Before serving a Notice the national authority will be required to consider any representations from the authority. It will be possible to alter by consent between an authority and the national authority the deadline for commencement and the geographical extent of a CEA parking order which is the subject of a Notice. The ability

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<sup>72</sup> RIA, December 2003 p 80

<sup>73</sup> Home Office, September 2002

to make such alterations is a recognition that practical problems may arise which frustrate the original intentions when the Notice was served.

A wider take up of civil enforcement of parking would also release police resources for other tasks. While acknowledging the tenuous nature of the figure the commentary in the Policing Bureaucracy Taskforce report on the ancillary tasks package for local authorities suggested that the full transfer of parking enforcement from the police to local authorities in England and Wales might release around 100 officers for other core tasks.

Given that civil enforcement is designed to be self-financing it is considered that the benefits of compelling authorities to take on such powers outweigh the costs.<sup>74</sup> If cost is an issue in any particular case it will be possible for an authority to raise the matter in making its representations to the national authority in response to a formal indication that the issue of a Notice is being contemplated.

### **3. Penalty charges**

Clause 73 provides that the level of penalty charges for traffic contraventions (including discounts or surcharges to encourage payment), charges for the removal, storage and disposal of illegally parked vehicles, or charges for the release from an immobilisation device shall be set in accordance with the arrangements detailed in schedule 9. Thus penalty charge levels in London will continue to be set through the arrangements provided for in section 74 of the *Road Traffic Act 1991*. Charges will be set by the London local authorities and TfL and submitted to the mayor for his approval. If TfL or the London local authorities fail to set the charges, or if the mayor does not approve the levels of charges set by the London local authorities, the charges are set by the mayor. The schedule gives the secretary of state a reserve power to intervene if he thinks any or all of the charges approved or set by the mayor are excessive, and it enables him by regulations to set the level of charges. From 1 April 2003 parking penalties in London were set at £100, £80 or £60 depending on the zone where the contravention occurs. The penalty for illegal use of a bus lane is £100. These penalties are discounted by 50% if paid within 14 days of issue of the penalty charge notice.

Outside London parking penalty charges are based on guidance issued by the relevant national authority (schedule 9 part 2). They were last reviewed in May 2001 and authorities may use a penalty of £60, £50 or £40. Again the penalty is discounted by 50% if paid within 14 days.

### **4. Special enforcement areas**

Clause 80 and schedule 10 allow the secretary of state (and the NAW) to designate a special enforcement area (SEA). In these areas the following will be prohibited:

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<sup>74</sup> RIA, December 2003 p 83



- Parking a vehicle such that no part of it is within 50 centimetres of the edge of the carriageway will be a traffic contravention for which a penalty charge may be issued (clause 81).
- Prohibition of parking at dropped footways (clause 82)

Local authorities have expressed concern about the increase in double parking in recent years. This includes parking alongside a vehicle that is legally parked in a bay. Double parking is not a specific offence. Therefore it cannot simply be added to schedule 3 of the *RTA 1991* to allow local authorities with DPE powers to enforce it. Section 42 of the *Road Traffic Act 1988* and regulation 103 of the *Road Vehicles (Construction and Use) Regulations 1986*<sup>75</sup> make it an offence to cause or permit a vehicle to stand on a road so as to cause any unnecessary obstruction of the road. These provisions allow the police to enforce double parking as well as other obstruction offences, such as parking in front of a driveway and at dropped kerbs. Inevitably this requires an exercise of judgement about whether an obstruction is being caused by a vehicle. Decriminalised parking enforcement on the other hand is aimed at cases where a clear contravention of a parking or waiting restriction has occurred and local authority parking attendants are not called upon to exercise judgement in the matter when issuing a PCN. Decriminalising the offence of obstruction in a PPA/SPA as a means of tackling double parking would introduce elements of subjective judgement into the civil enforcement process potentially leading to lengthy arguments between recipients of PCNs and authorities and before parking adjudicators hearing appeals. It would also deprive the police of the means of dealing with obstructive parking in other circumstances, for example late at night or in the early hours around sites of entertainment when local authority parking attendants might not be on duty. For these reasons the government decided not to enable local authorities to enforce double parking by decriminalising the offence of obstruction.<sup>76</sup>

To tackle the problem of double parking in London section 5 of the *London Local Authorities Act 1995* as amended by section 6 of the *London Local Authorities Act 2000* created a specific offence of parking more than 0.5 metres away from the edge of the carriageway, unless wholly within a designated parking place. This is an explicit contravention that can be enforced by a parking attendant. The Bill provides the possibility of introducing a similar contravention outside London which can then be enforced by local authorities with DPE powers.

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<sup>75</sup> SI 1986/1078

<sup>76</sup> DfT *Road Traffic Act 1991: Decriminalised parking enforcement proposals for decriminalisation of additional parking offences outside London*, 6 December 2002 para 8  
[http://www.dft.gov.uk/stellent/groups/dft\\_localtrans/documents/page/dft\\_localtrans\\_507572.hcsp](http://www.dft.gov.uk/stellent/groups/dft_localtrans/documents/page/dft_localtrans_507572.hcsp)

## 5. Surplus income

Local authorities are allowed to retain the proceeds from the penalty charges and use it to finance the enforcement and adjudication systems. Any surpluses must be used for other "traffic management purposes", as set out in the legislation: specifically section 55 of the *Road Traffic Regulation Act 1984*, as amended.<sup>77</sup> Section 55(4) states that any surplus should be used to provide or maintain off-street parking accommodation; but "if it appears to the local authority that the provision in their area of further off-street parking accommodation is unnecessary or undesirable" then these funds may be used for two other purposes:

- (i) meeting costs incurred, whether by the local authority or by some other person, in the provision or operation of, or of facilities for, public passenger transport services
- (ii) the purposes of a highway road or road improvement project in the local authority's area.

In London where SPAs are well established the total annual parking surplus is more than £65 million although by no means all boroughs make significant sums. Only boroughs such as Westminster and Kensington and Chelsea have large surpluses.

Clause 89 of the Bill amends section 55 to add to that list the additional purpose of using surplus income to fund local environmental improvements. "Environmental improvement" is defined in a broad sense to encompass recreational or scenic improvements. It also amends section 55 to enable the appropriate national authority to make regulations specifying classes or descriptions of authorities, or particular authorities (for example those which may be designated under section 99 of the *Local Government Act 2003* as high-performing authorities), as having complete freedom in the way they spend surplus parking income once the needs of parking provision have been considered.

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<sup>77</sup> There are no restrictions on the use of surplus income from off-street parking facilities.

## Acronyms

ACPO	Association of Police Officers
CEA	Civil Enforcement Area
DfT	Department for Transport
DPE	Decriminalised Parking Enforcement
FPN	Fixed Penalty Notice
HA	Highways Agency
HAUC	Highways Authorities and Utilities Committee
ICO	Integrated Control Office
ISU	Incident Support Units
NAW	National Assembly for Wales
NJUG	National Joint Utilities Group
NRSWA	New Roads and Street Works Act
PCN	Penalty Charge Notice
PPA	Permitted Parking Area
SPA	Special Parking Area
TCC	Traffic Control Centre
TfL	Transport for London
TLRN	Transport for London Road Network