

Consultation Paper

August 2011



New Roads and Street Works Act 1991

Lane Rental Schemes in
England – A Consultation



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1. Introduction

- 1.1** The purpose of this consultation is to invite views on proposals to allow local highway authorities in England to implement "lane rental" schemes, under which they would charge a daily fee for the duration of works carried out in the street at the busiest times.
- 1.2** These works are a necessary fact of life. They are essential to provide and maintain the essential utility and transport services on which individuals and businesses depend. However, these works also cause significant disruption to road users and local communities. By some estimates, 1.2 million street works contribute to congestion that costs the economy over £4 billion a year, and a broadly similar number of highway works also take place each year.
- 1.3** The Government is determined to reduce the adverse impacts of these works, and its strategy is based around:
- **statutory duties on those undertaking works** – e.g. minimum standards for safety, training and quality of highway reinstatements;
 - **statutory powers for highway authorities** to enable them to coordinate works in their areas, including stronger powers to regulate works on the most critical streets, and more generally to manage their highway networks to secure the expeditious movement of traffic;
 - **financial incentives** for works promoters to reduce works durations and to carry out works at less disruptive times; and
 - **non-regulatory measures** – encouraging wider adoption of good working practices, and working towards consistent benchmarking of performance to shine a light on good and poor performance and give a clearer focus for future improvement.
- 1.4** The Government considers that, in addition to the existing tools available to highway authorities, well-designed and carefully-targeted "lane rental" schemes could encourage those carrying out works to reduce further the disruption caused on the most critical parts of their local road networks. A lane rental scheme would involve undertakers paying a daily charge for the duration of their works, but with exemptions where works are carried out at less disruptive times.

- 1.5** Existing primary legislation (section 74A of the New Roads and Street Works Act 1991) provides the necessary powers for local highway authorities to put in place lane rental schemes, subject (in England) to the approval of the Secretary of State, and allows Regulations to make further provision about such schemes. Although the primary legislation relates specifically to street works (ie works by utilities and others with apparatus in the highway), highway authorities' own works also cause substantial disruption and authorities proposing lane rental are therefore strongly encouraged to apply the same lane rental charges to their own works as to others'.
- 1.6** Lane rental pilot schemes were operated in Camden and Middlesbrough between 2002 and 2004, but no further schemes have since been implemented. As a result of subsequent changes to various aspects of street works legislation, the existing lane rental Regulations are now out of date and, in effect, inoperable.
- 1.7** This consultation therefore invites views on new proposals to replace the existing lane rental Regulations and to publish supporting guidance, in order to allow highway authorities to design and implement new lane rental schemes targeted at the most critical parts of the road network. In drawing up its new proposals, the Government has considered what lessons might be learned from the experience of the previous pilot schemes, and is now proposing a significantly different approach to that tested in those pilots. In particular, any future schemes will need to target just the specific streets or parts of streets where works cause the greatest level of disruption, and will apply charges only in respect of works that occupy the highway at the busiest times.
- 1.8** However, given that lane rental is not yet proven as a successful model for tackling disruption caused by works, the Government is at this stage contemplating lane rental schemes in just one or two places - one major urban area and one non-metropolitan area. Early evidence from such schemes would inform decisions on whether lane rental could usefully be applied more widely.
- 1.9** The consultation pack comprises:
- this consultation paper;
 - draft guidance to local highway authorities in England who might be contemplating the development of a lane rental scheme (Annex A);
 - draft Regulations about lane rental schemes in England (Annex B);
 - a consultation-stage impact assessment (Annex C);
 - a pro-forma for responding to the consultation (Annex D); and

- a copy of the government's Consultation Criteria (Annex E).

1.10 The consultation is likely to be of particular interest to highway authorities and street works undertakers in England, representatives of road users and the business community, and suppliers of street works management systems and software, but responses are invited from any interested party. The deadline for responses is **31 October 2011** and full details of how to respond can be found in Chapter 3 below.

1.11 This consultation and the Government's proposals would apply to England only. Legislative proposals for lane rental schemes elsewhere in the United Kingdom would be a matter for the devolved administrations.

2. Issues for consultation

Purpose and key principles of lane rental

2.1 Chapters 1 and 2 of the draft guidance set out the Government's rationale for considering lane rental schemes and suggests some examples of how street works undertakers might adapt their working practices to reduce disruption in response to well-designed and carefully-targeted schemes. It also establishes some key principles that the Government believes should underpin any lane rental scheme. In particular, it makes clear the Government's view that future schemes need to be:

- **targeted** - i.e. focused only on those critical parts of the highway network where street works cause the greatest disruption; and
- **avoidable** - i.e. designed in a way that enables undertakers to reduce or avoid their exposure to charges by carrying out their works in a less disruptive way (rather than merely operating as an unavoidable tax on undertakers).

2.2 The draft guidance also emphasises the Government's interest at this stage in seeing this approach to lane rental being pioneered in just one or two places, with experience from those places informing future decisions on whether lane rental could play a wider role. Furthermore, it emphasises that lane rental "pioneers" will be approved only if it can be shown that every opportunity has been taken to achieve the desired results through other less costly means, including a permit scheme.

Q1: Do you agree or disagree with the suggested rationale and key principles set out in Chapters 1 and 2 of the draft guidance, and why?

Q2: Do you agree or disagree the Government should be looking to test the proposed new approach in just one or two places before taking decisions on whether lane rental could usefully be applied more widely? Do you agree or disagree that lane rental "pioneers" should be approved only if they have already sought to achieve the desired behavioural changes through a permit scheme?

Highway works

- 2.3** Works carried out by, or on behalf of, highway authorities also cause significant disruption for road users and local communities.
- 2.4** The primary legislation about lane rental applies specifically to street works. However, lane rental will be most effective in reducing disruption if the same charges are applied to highway authorities' own works. The Government would strongly encourage lane rental authorities to do so, and to apply the proceeds to measures designed to reduce the disruption caused by future works (i.e. for the same purposes as revenues collected from street works undertakers). (There is more detail on this in paragraph 2.17 below and Chapter 2 of the draft guidance).

Q3: Do you agree or disagree that authorities seeking to introduce lane rental should be strongly encouraged to apply the same lane rental charges to their own highway works, and why?

Scope of lane rental schemes

- 2.5** The Government considers that highway authorities should have discretion to determine which streets and works should be covered by lane rental charges, but that some constraints should be set out in Regulations. It also proposes that guidance to highway authorities should set out some additional expectations of authorities and their proposed schemes. The guidance would not have direct statutory force, but proposed schemes that are inconsistent with the guidance would need to demonstrate genuinely exceptional reasons for these inconsistencies in order to secure the Secretary of State's approval.
- 2.6** Proposed statutory exemptions from lane rental charges are set out in the draft Regulations and summarised in Chapter 3 of the draft guidance. Chapter 3 also emphasises that charges should be applicable only on the most critical streets at the busiest times. In summary, it is proposed that:
- categories of works that are exempt from overrun charges (under section 74 of the New Roads and Street Works Act 1991) would also be exempt from lane rental charges; and
 - charges would be permitted only on streets that have been designated as traffic-sensitive by the highway authority, and should apply only if works occupy the highway at the busiest times.

- 2.7** The draft guidance makes clear that, to secure the Secretary of State's approval, proposed schemes would need to be carefully targeted on the most critical parts of the authority's road network (i.e. those places where works can be expected to cause the greatest disruption), and that authorities need to adopt an evidence-based approach to identifying those critical parts of the network.
- 2.8** This means that being designated traffic-sensitive would be a necessary condition, but not of itself a sufficient one, to justify the inclusion of a particular street within the scope of a lane rental scheme.
- 2.9** We would welcome views on whether diversionary works should be included in the list of works to be exempted. Diversionary works occur where it is necessary to move apparatus in order to facilitate major highway, bridge or other transport works. These works are generally specified by authorities rather than apparatus owners and more than 80% of the costs are recharged to the relevant authority. However from a road user perspective, the disruption caused by diversionary works is indistinguishable from any other works, and it is arguable that they should be subject to the same control mechanism.

Q4: Do you agree or disagree with the proposed exemptions from lane rental charges, and the further expectations as set out in the draft guidance? Do you have a view on whether diversionary works should be subject to lane rental?

Lane rental charges

- 2.10** Individual lane rental schemes will need to set out their own charging structures and levels. The draft Regulations prescribe a maximum daily charge of £2,500 that may be applied in relation to any particular works, but authorities will need to justify fully the proposed levels of charges with a robust cost-benefit analysis when submitting schemes for approval. It will not be acceptable for scheme promoters simply to apply the maximum charges without clear justification. This is necessary because, to the extent that costs of lane rental cannot be avoided by utility companies acting efficiently, regulators are expected to make an allowance for those costs when setting overall price caps.
- 2.11** Accordingly, scheme promoters would need to satisfy the Secretary of State that:
- the proposed charges can reasonably be expected to provide an effective financial incentive for undertakers to adopt less disruptive working practices, such as those described elsewhere in the draft guidance, but are no higher than necessary to be confident of achieving that aim; and

- their proposed charge levels are proportionate to the costs of congestion and any other adverse impacts that are likely to arise from the works to which the charges will apply.

2.12 If the level of charge needed to secure the desired behavioural changes from undertakers is higher than the costs of the adverse impacts of their works, the Government's view is that the application of lane rental charges is unlikely to be justified. This is because the costs to undertakers (and ultimately to their consumers) of behavioural change would be greater than the benefits arising from that change. This is also why the Government considers that future lane rental schemes, unlike the earlier pilots, should be focused only on a highway authority's most critical streets.

2.13 In line with overrun ("section 74") charges, provision is included in the draft Regulations for a reduced rate of charge in certain situations where a single item of signing, lighting and guarding (e.g. a traffic cone) is inadvertently left in the street after works have been completed. If any changes are made to this aspect of overrun charges in light of the Department's consultation last year, it is likely that the Government would wish to apply the same changes to the lane rental proposals.

Q5: Do you agree or disagree that the two principles described in paragraph 2.10 of this consultation document should inform the setting of charge levels in individual lane rental schemes? If you disagree, what alternative principles would you suggest, and why?

Q6: Do you agree or disagree with the maximum level of charge proposed in the draft Regulations? If you disagree, please suggest an alternative and provide evidence to support your view that your proposed alternative would be more consistent with the two principles mentioned above.

Process for developing lane rental schemes

2.14 Chapter 4 of the draft guidance sets out the Government's expectations for consultation on proposed lane rental schemes, and for ongoing dialogue between authorities, undertakers and other interested parties throughout the process of developing any scheme.

Q7: Do you agree or disagree with the expectations set out in the draft guidance regarding formal and informal consultation and dialogue, and why?

Applications to the Secretary of State

- 2.15** The primary legislation about lane rental requires local highway authorities in England to secure the approval of the Secretary of State before they can implement lane rental schemes. Such approval would be confirmed by a statutory instrument.
- 2.16** Chapter 4 of the draft guidance summarises the information that would need to be included in any application to the Secretary of State, and sets out the criteria that the Secretary of State is likely to apply when considering proposed schemes.

Q8: Is there any other information, in addition to that listed in Chapter 4 of the draft guidance, that ought to be provided as part of any application to the Secretary of State? If yes, what additional information should be included, and why?

Q9: Do you agree or disagree with the proposed criteria against which applications would be assessed, and why?

Application of revenues from lane rental schemes

- 2.17** The relevant primary legislation provides for net revenues from lane rental schemes (i.e. revenues remaining after deducting the authority's running costs for the scheme) to be retained by the authority, but leaves it to Regulations to set out how those revenues are to be applied by the authority.
- 2.18** The draft Regulations propose that revenues should be applied specifically for purposes that will help to reduce the disruption caused by street works in the future. These measures might include research and development, infrastructure works to minimise the disruption caused by future works (eg pipe subways) or measures to enhance the skills and capacity of the local authority staff charged with managing street works and assessing the proposed duration of works. Authorities are encouraged to work with undertakers in their areas to consider how revenues might best be spent to achieve the specified purposes.

Q10: Do you agree or disagree that local highway authorities should apply the net revenues from lane rental schemes to help reduce future disruption caused by street works, and why?

Safety issues

- 2.19** Given the intention that lane rental should encourage street works to be completed more quickly, and potentially at night where local environmental considerations permit, it will be important for authorities designing schemes to be satisfied that safety will not be compromised by the operation of any lane rental scheme. Those carrying out works are ultimately responsible for ensuring that those works are carried out safely, in accordance with relevant health and safety legislation, the Code of Practice on Safety at Street Works and Road Works, and any other applicable legislation or guidance. The existence of a lane rental scheme would be no excuse for cutting corners in relation to safety, or for compromising the quality of reinstatements. The requirements in the Safety Code and the Specification for the Reinstatement of Openings in Highways would apply in full to works carried out under a lane rental scheme.
- 2.20** The Government would welcome views on whether there are any features that could be built into schemes, or other actions an authority might take, to help ensure that safety is not compromised. For example, if there were safety-related concerns, it might be appropriate for an authority operating a lane rental scheme to use a portion of the revenues to fund an increased number of inspections of street works sites while works are in progress.

Q11: Do you have any practical suggestions as to how schemes might be designed to minimise any risk of safety being compromised?

Operational and systems issues

- 2.21** When developing scheme proposals, authorities will need to consider from the outset the operational and systems implications of their proposed scheme designs. In particular, they will need to consider how their proposals will be delivered within the prevailing version of the EToN and National Street Gazetteer technical specifications.
- 2.22** The Department is working with interested parties to ensure that undertakers will be able to identify from the National Street Gazetteer the places where lane rental charges apply, when they apply and at what levels. In the event that an authority believes that other changes to the Gazetteer or EToN technical specifications might be necessary, they are encouraged to discuss the issues with the Department as soon as possible.

Q12. Do you agree or disagree that information about lane rental charges should be made available via the National Street Gazetteer, and why?

Q13. If you are a local authority contemplating a lane rental scheme, have you identified any likely need for amendments to the EToN technical specification? If so, why do you believe such amendments are needed?

Impacts on business

2.23 No costs or benefits will arise as an immediate consequence of the making of the proposed Regulations. Costs and benefits would arise only if authorities choose to bring forward proposals for lane rental schemes and if those schemes are subsequently implemented following approval by the Secretary of State. Nevertheless, a consultation-stage impact assessment is included as part of the consultation pack.

2.24 The impact assessment provides an analysis of the nature of costs and benefits that would arise from lane rental schemes. It includes a broad range of quantified costs and benefits that might arise, though this is necessarily uncertain at this stage. As the impact assessment reinforces, the Secretary of State's approval role will play an important role in ensuring that the benefits of individual scheme proposals justify the costs.

Q14: Do you have any comments on the consultation-stage impact assessment, or any data or analysis that would enable the Department to refine its analysis of the costs, benefits and other impacts likely to arise from real-world lane rental schemes?

"Sunset" clauses

2.25 The Government has indicated its intention that new regulatory measures should normally include a "sunset" clause. This would mean that such measures would need to be reviewed within a specified time period, and would therefore only continue if the measures were found still to be necessary and effective. The intention is that regulatory measures should be subject to periodic reviews, so that any measures that outlive their usefulness do not remain in force indefinitely.

2.26 The draft Regulations include provision for an expiry date seven years after the Regulations come into force. Prior to that date, the Government will review the operation of any lane rental schemes before deciding whether to amend the expiry date so that the Regulations can remain in force for a further period. Any scheme approved by the Secretary of State would therefore have to be approved subject to an expiry date,

which could similarly be extended if the scheme remains necessary and cost-effective.

Q15: Do you agree or disagree that an expiry date should be included in the Regulations as proposed, and why?

Other issues

Q16: Do you have any other comments on (a) the draft guidance, or (b) the draft Regulations?

3. How to respond

- 3.1** The consultation period will run until **31 October 2011**. Please ensure that your response reaches us by the closing date. If you would like further copies of this consultation document, it can be downloaded from www.dft.gov.uk. An electronic (MS Word) version of the response template can be found at the same web address. Please contact the street works team at the e-mail address below, or via the Department for Transport enquiry line (0300 330 3000), if you would like to receive a copy in an alternative format.
- 3.2** Wherever possible, consultation responses should be sent by e-mail to lane.rental@dft.gsi.gov.uk. Where this is not possible, hard-copy responses may instead be sent.
- 3.3** Until 1 October, our postal address is:
- Lane Rental Consultation
Traffic Division
Department for Transport
Zone 3/26, Great Minster House
76 Marsham Street
London SW1P 4DR*
- 3.4** From 1 October, our postal address will be:
- Lane Rental Consultation
Traffic Division
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London SW1P 4DR*
- 3.5** When responding, please state whether you are responding as an individual or representing the views of an organisation. If responding on behalf of a larger organisation please make clear whom the organisation represents and, where applicable, how the views of your members were gathered.

Freedom of Information

- 3.6** Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).
- 3.7** If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.
- 3.8** In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 3.9** The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Consultation criteria

- 3.10** The consultation is being conducted in line with the Government's Code of Practice on Consultation. The criteria are listed at Annex E of this consultation pack, and a full version of the Code of Practice on Consultation is available on the Better Regulation Executive website at:

<http://www.bis.gov.uk/files/file47158.pdf>
- 3.11** The formal written consultation is being carried out over a ten-week period. This is considered appropriate as the Department has already discussed its proposals with representatives of local authorities and the utility sector via the Highway Authorities and Utilities Committee (HAUC(UK)) over a period of several months, and because full consultation would also need to be carried out by local authorities on any specific proposals for lane rental schemes.

3.12 If you consider that this consultation does not comply with the criteria or have comments about the consultation process please contact:

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consultation@dft.gsi.gov.uk

Next steps

3.13 The Department will consider the responses to this consultation carefully before announcing its conclusions. A summary of responses to the consultation is expected to be published within three months of the closing date. Subject to the outcome of the consultation, it is intended that the proposed Regulations would be finalised at the end of the year, in readiness to be laid before Parliament.