

Guidance

January 2012



New Roads and Street Works Act 1991

Lane Rental Schemes:
Guidance to English
Local Highway Authorities



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1. Introduction

Purpose of this document

- 1.1** This document provides guidance to English local highway authorities who wish to develop proposals to operate lane rental schemes. Lane rental schemes would involve charging those carrying out works in the street for the time their works occupy the highway, with charges focused on the very busiest streets at the busiest times.
- 1.2** The power for local highway authorities to implement lane rental schemes in England is subject to the approval of the Secretary of State. Following pilot schemes which ran between 2002 and 2004, no further schemes were submitted to the Department, but new Regulations are being put in place to allow authorities to bring forward new scheme proposals.
- 1.3** Given that lane rental is not yet proven as an effective model for reducing congestion and other disruption caused by works, the Government is at this stage interested in the possibility of lane rental schemes being implemented in just a very small number of areas. Such schemes would need to be different in approach to the earlier pilots, focusing much more specifically on the most acute problem areas. Schemes in up to three local areas could act as pioneers of this new approach, with their early progress informing future decisions on whether lane rental could usefully be applied more widely.
- 1.4** This guidance sets out what will be expected as part of any application to the Secretary of State for approval to operate such a scheme. In particular, it provides a clear framework for a much more targeted approach than the previous pilots, focused on the key strategic locations on a network and with charges applying only at the busiest times.
- 1.5** This guidance document is intended to be read in conjunction with the Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters, the Network Management Duty Guidance, and the relevant permit scheme order. This document is not a statutory Code of Practice, but provides a clear guide as to the conditions under which the Secretary of State is likely to approve (or not to approve) any proposals to operate future schemes. It emphasises the

Government's intention to approve no more than three schemes - one in a major urban area and one or two in non-metropolitan areas - until the lane rental concept has been proven effective.

Context

- 1.6** Works by utilities and others with apparatus in the street ("street works") and works carried out by or on behalf of highway authorities for road purposes ("highway works") are necessary in order to provide and maintain essential services and transport networks on which we all depend. However, these works can also cause significant disruption, imposing substantial costs on individuals and on the economy. The Government considers that there is considerable scope to reduce this disruption. Its strategy is based around providing the right powers, incentives and tools for all involved to identify and adopt best practice in the management and coordination of works.
- 1.7** The New Roads and Street Works Act 1991 ("NRSWA") and the Traffic Management Act 2004 ("TMA") place duties on highway authorities to coordinate street and highway works, and more generally to facilitate the expeditious movement of traffic within their areas (the so-called "network management duty"). It is the highway authority's responsibility to ensure that it makes appropriate use of the powers at their disposal, recognising that different tools may be appropriate in different situations.
- 1.8** Among other tools, the legislation empowers highway authorities to establish permit schemes, under which promoters of street and highway works must obtain a permit to allow those works to be executed. Any application for a permit will specify the period within which the works are to be carried out. Permit schemes have so far been put in place in most of London, in Kent and in Northamptonshire, and these schemes are providing a powerful tool for authorities and undertakers to improve the management and coordination of works and thereby reduce disruption.
- 1.9** NRSWA also provides for financial incentives to reduce the disruption caused by street works. Authorities can levy "overrun charges" under section 74 of NRSWA where street works are not completed within an agreed, reasonable period of time. While these charges provide a strong incentive to avoid works overrunning beyond the end of the reasonable period, they do not provide a similar incentive to reduce durations or disruption to road users within the agreed reasonable period.
- 1.10** NRSWA provides the legal basis for lane rental charges to be applied to street works. It does not require lane rental schemes to impose charges in relation to highway works, which typically account for around half of all works in the street. However, local authorities' network management

duty (mentioned above) does not distinguish between different causes of congestion, and the accompanying statutory guidance establishes a clear principle of "parity". Applying lane rental charges to highway works on the same terms as to street works will maximise the overall benefits, as well as promoting fairness by ensuring parity of treatment.

The role for lane rental

1.11 Section 74A of NRSWA enables highway authorities, with the approval of the Secretary of State, to charge street works undertakers¹ a daily charge for each day during which their works occupy the highway – commonly referred to as “lane rental” schemes.

1.12 The Government considers that well-designed and well-targeted lane rental schemes, focused on the most critical parts of the highway network and with charges applying only at the busiest times, should encourage those undertaking works to carry out their works in a less disruptive manner. For example, where appropriate and consistent with protecting public safety, schemes could provide real financial incentives that encourage works promoters to:

- reduce the length of time that sites are unoccupied, hence reducing total works durations;
- improve planning, coordination and working methods to maximise efficiency;
- carry out more works outside of peak periods, reopening the highway to traffic at the busiest times (e.g. by plating over their excavations) and/or making greater use of evening or weekend working where the local environmental impact is acceptable;
- optimise the number of operatives on site to enable works to be completed as quickly as possible;
- complete works to the required standard first time, and with permanent reinstatement, reducing the need to return to the site to carry out remedial works.

1.13 While works promoters may already employ these practices to some extent, their capacity to do so will be limited by the costs involved and the resources available to them given the terms of their regulatory settlements. Major infrastructure renewal programmes and other essential works will inevitably take time and cause some disruption, even with lane rental in place. But works promoters are more likely to be

¹ Statutory undertakers and section 50 licence-holders - referred to collectively as “undertakers” in this guidance.

inclined to invest in practices such as those suggested above if, by doing so, they can reduce their exposure to lane rental charges that would otherwise be payable.

Legislative background

- 1.14** Primary legislation for lane rental is already in place in section 74A of NRSWA, but this section requires Regulations to be in force before lane rental schemes can be brought into operation. Regulations were made in 2001 to enable pilot schemes to operate in England, but subsequent changes to related street works legislation means that those 2001 Regulations were no longer workable and needed to be replaced. Accordingly, new Regulations are being put in place to replace the 2001 Regulations.

2. Scope of lane rental schemes

Overview

- 2.1** Before taking any decision to begin developing a lane rental scheme, a highway authority needs to be clear about its objectives for such a scheme. It will need to assess carefully whether those objectives could be met, either wholly or in part, through more effective use of other existing powers and tools available to highway authorities. In particular, an authority will need to show that it has exhausted all reasonable opportunities to achieve the desired outcomes by means of a permit scheme. A lane rental scheme will involve significant costs to those who actually bear the charges, and so decisions to implement schemes should not be entered into lightly.
- 2.2** Authorities also need to be mindful of the lessons from the lane rental pilot schemes that operated in Camden and Middlesbrough. The impact of these pilots is likely to have been limited by:
- the local and short-term nature of the schemes, which will have reduced the incentive for undertakers to invest in long-term changes to their working practices; and
 - the structure and level of charges, which were applied across all streets in a way that offered limited opportunity for undertakers to reduce exposure to charges (for example by carrying out works only at non-traffic-sensitive times).
- 2.3** For future schemes to succeed in reducing disruption caused by works, while avoiding excessive costs being passed on to utility consumers, the Government considers that schemes must focus specifically on those critical parts of the highway network where the costs of disruption caused by works are greatest. Authorities proposing lane rental schemes will need to show that they have taken an evidence-based approach to identify these critical parts of the network, which might include certain junctions, pinch-points and heavily-trafficked streets or parts of streets that are already operating close to, or beyond, their intended capacity.
- 2.4** The Government also considers that charges must be applied only when works occupy the highway at peak periods, with exemptions from charges at other times, so as to provide a real financial incentive to carry

out works at less disruptive times. Providing exemptions that encourage less disruptive working practices will also help to demonstrate to undertakers, and to their customers (who will ultimately bear a portion of the costs), that lane rental schemes are not simply being employed by the highway authority as a money-raising tool.

Highway works

- 2.5** Highway works are not within the scope of section 74A of NRSWA. However, they are also a significant cause of traffic congestion and the network management duty does not distinguish between different causes of congestion. The Network Management Duty Guidance emphasises the need for parity of approach, in particular making clear that "Parity is an important principle in exercising the [network management] duty. Authorities must lead by example, **applying the same standards and approaches to their own activities as to those of others**".²
- 2.6** When deciding whether to approve scheme proposals, the Secretary of State will expect authorities' plans to be consistent with their obligations under the network management duty, and will consider carefully whether authorities' plans are consistent with this "parity" principle.

Pioneering the new approach to lane rental

- 2.7** At this stage the Government is specifically looking for schemes to be introduced in no more than three areas - one large urban area and one or two non-metropolitan areas. These would need to be areas that have already attempted to achieve the desired improvements by means of a permit scheme. Early progress with these pioneering schemes would then inform future decisions on whether lane rental could usefully be applied more widely, and hence whether further applications might be invited from interested authorities in other parts of the country.

² Network Management Duty Guidance, Department for Transport, 2004, paragraph 68. Emphasis added.

3. Key features of lane rental schemes

Introduction

- 3.1** In the Government's view, the detailed design of lane rental schemes is best determined at a local level by highway authorities in close consultation with works promoters and other interested parties. The legislation sets a number of important boundaries within which all schemes will have to operate, including:
- maximum charge levels that can be applied;
 - types of works and streets in respect of which lane rental charges can be applied; and
 - the purposes for which the highway authority may use the proceeds of lane rental schemes.
- 3.2** However, the legislation also provides significant discretion for authorities to vary certain features of schemes subject to the constraints mentioned in this chapter – in particular, the specific streets (or parts of streets), times and days at which charges will apply, the actual charge levels (subject to the statutory maximum) and any additional circumstances in which charges will be waived or reduced. This guidance sets out some key principles that scheme promoters will be expected to adhere to when deciding how to exercise this discretion. Compliance with these principles will form a key consideration when the Secretary of State is considering local authorities' proposals to implement lane rental.

Interaction with permit schemes

- 3.3** Lane rental "pioneer" schemes would operate alongside the authority's existing permit scheme. The permit scheme would continue to play a crucial role alongside lane rental charges, not least because of the need to ensure that works taking place on the busiest streets are properly coordinated.

Streets where charges may be applied

- 3.4** Lane rental charges must be targeted only at the most critical parts of an authority's street network. These are the streets (or parts of streets) where evidence shows that works in the highway cause the highest levels of disruption and thus require the greatest efforts to smooth traffic flow. Therefore streets should be selected only where the daily charge will have the most effect in reducing disruption caused by works, and where the benefits of reducing disruption will be sufficient to justify the costs of lane rental.
- 3.5** The Regulations prevent the application of lane rental charges on streets that have not been designated as traffic-sensitive or protected by the highway authority. However, the fact that a particular street is designated as traffic-sensitive or protected is not, of itself, a sufficient condition to justify its inclusion within the scope of a scheme. In considering proposed schemes, the Secretary of State will need to see that the authority has adopted an evidence-based approach to identify the critical streets (or parts of streets) where lane rental charges are to apply.
- 3.6** Although the main focus of lane rental must be works that affect the carriageway (either directly or because a footway closure requires the provision of a safe route for pedestrians in the carriageway), authorities will need to consider how their scheme will treat works that do not affect the main carriageway. In general, the disruption caused by footway works is unlikely to be sufficient to justify lane rental charges, though there may be a few specific cases (e.g. around major transport interchanges or at the very busiest pedestrianised areas) where some level of charging is merited. The Regulations therefore leave open the possibility of charging for works that do not take place within the carriageway, but to secure Secretary of State approval a scheme proposer would need to demonstrate a robust cost-benefit case and such charging would need to be limited to a small number of specific locations.
- 3.7** Works in footpaths and bridleways are excluded from the application of lane rental charges.

Types of works

- 3.8** Unless covered by an exemption, any street works would be liable to lane rental charges (whether carried out by an undertaker by virtue of a specific statutory right to carry out such works, or under a section 50 licence). In addition to the exemptions mentioned above for works in

streets that are neither traffic-sensitive nor protected, the Regulations also exempt street works:

- whose impact is confined solely to the verge of a highway;
- in a traffic-sensitive street, other than at a traffic-sensitive time; or
- in the footway of a traffic-sensitive street, at a traffic-sensitive time, so long as the works do not involve breaking up the street, or tunnelling or boring under it..

3.9 In respect of genuine emergency works that must be carried out during the charging period in order to avoid significant danger to public safety or significant damage to property, schemes will also be expected to provide a charge-free period to enable the immediate emergency to be dealt with and the road re-opened to traffic. This is consistent with the principle that charges must be genuinely avoidable, rather than merely operating as an unavoidable tax. It will also avoid creating a perverse incentive for works promoters to delay genuine emergency works until off-peak times in order to avoid charges.

3.10 It will be for authorities proposing schemes to determine the precise terms of the exemption and how it will work in practice. One option would be to allow an exemption of 24 hours from the start of the emergency, but the Department is open to alternative propositions that provide a realistic opportunity to deal with the immediate emergency without charge³.

3.11 These exemptions will also need to be designed so that only genuine emergencies can benefit from the exemption. It is envisaged that, in many cases, it will be possible for the authority to carry out a site visit to satisfy itself that an emergency is genuine. In other cases, the authority might reasonably require the works promoter claiming the exemption to provide documentary evidence of the nature of the emergency before the exemption will be granted. Schemes will need to set out what information or evidence the works promoter would need to supply in order to demonstrate their entitlement to an exemption on emergency grounds. In the event of a works promoter falsely claiming an exemption on these grounds, the full charge will be payable, and deliberately making a false claim in order to benefit from an exemption is likely to constitute fraud.

³ For example, where an emergency arises at 11.00 on a Monday morning, it should normally be possible for the emergency to be addressed and the road to be reopened before the start of the charging period on Tuesday morning. So it might be possible for a scheme to specify a cut-off time so, where an emergency arises before that cut-off time, the exempt period would run only until the start of the charging period the following working day (rather than a full 24 hours).

- 3.12** Schemes can also specify further types of works that are to be exempt from lane rental charges, though scheme proposers will need to justify the case for doing so. To avoid creating additional burdens, any such exemptions would need to be deliverable within the prevailing version of the technical specification for electronic transfer of notices (EToN).
- 3.13** Diversionary works are outside the scope of charges under section 74A of NRSWA.

Charges

- 3.14** The Regulations prescribe a maximum daily lane rental charge that may be applied: £2,500. Each individual scheme has to set out the level of charges that will actually be applied. Levels of charges set out in any proposed scheme will need to be fully justified in each case. It will not be sufficient for scheme promoters simply to apply the maximum charge level without clear justification. In order to secure the Secretary of State's approval, scheme promoters will need to show 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 this guidance, but are no higher than necessary to be confident of achieving that aim; but also
 - their proposed charge levels are no higher than the costs of congestion and any other adverse impacts that are likely to arise from the works to which the charges will apply.
- 3.15** In general it is expected that, at any given location at any given time, the daily charge will be the same for all types of work. However, higher rates of charge may be acceptable (subject to the £2,500 maximum) in respect of remedial works, given the wholly avoidable nature of such works.
- 3.16** The Regulations do not preclude charges being applied at weekends, as there will be some cases where works at weekends are actually as disruptive, or even more disruptive (e.g. streets with heavy tourist traffic). Authorities will need to determine the detailed arrangements – e.g. the specific days and times at which charges would apply – but scheme design will need to be consistent with the need to provide real opportunities to reduce or avoid exposure to charges by carrying out works in less disruptive ways.
- 3.17** Different charges may be applied on different days of the week (for example to differentiate between weekdays and weekends). However, no charges may be levied on a non-traffic-sensitive day, or on any traffic-sensitive day if the works do not obstruct or otherwise impact upon the

carriageway (or the footway or cycleway, in a case where footway or cycleway charges apply) at any time during the traffic-sensitive period(s).

- 3.18** In determining when charges should apply, authorities will need to consider carefully the role of local authority environmental health (EH) departments. EH departments have powers under the Control of Pollution Act 1974 (CoPA) to control the noise from construction works. Relevant guidance is provided in British Standard 5228:2009. In residential areas, EH departments may restrict works that cause substantial noise or vibration from being carried overnight.
- 3.19** When designing lane rental schemes, authorities will therefore need to work closely with EH departments to understand the constraints that are likely to apply. Scheme design will need to ensure that works promoters have realistic opportunities to avoid or substantially reduce their exposure to charges, even once environmental health constraints are taken into account.
- 3.20** It will also be in authorities' and other works promoters' interests to work with EH departments before lane rental schemes are put in place, to encourage them to strike an appropriate balance between congestion- and noise-related objectives. For example, it would be helpful to ensure EH departments recognise that, while some aspects of works may cause substantial noise and vibration (e.g. excavation), others should not (e.g. laying new pipes and cables once a trench has been dug), and that some works can be completed using trenchless techniques that do not require disruptive excavation.
- 3.21** Seeking prior consent with the local EH department under section 61 of CoPA would provide certainty over such matters as the permissible hours of working, the methods of working and any noise or vibration limits to be met. EH departments must not impose unnecessary constraints, and there are mechanisms in place in CoPA to challenge the approach of an EH department should the constraints imposed seem unnecessarily restrictive.
- 3.22** Authorities should also consider carefully how their scheme would treat joint working arrangements involving different works promoters - for example by providing for a single charge to be apportioned between the different works promoters, or even by offering additional discounts to encourage joint working.
- 3.23** The Regulations allow lane rental charges to be applied on a daily basis while the works are occupying the highway for the duration of works up to the end of the agreed "reasonable period", but also during days of unreasonably prolonged occupation (commonly known as overruns).

Lane rental charges may be applied in addition to charges under section 74 of NRSWA for the duration of the overrun.

- 3.24** The Regulations also make provision (similar to overrun charges) for a one-off charge to apply (in place of the full daily charge) where up to five items of signing, lighting or guarding have inadvertently been left behind on site and have been removed by the end of the working day following the day on which the authority informed the undertaker and asked them to remove the items. This reduced charge would apply only in cases where the responsible party had made all reasonable efforts to clear the site but had inadvertently left a small number of items behind. Full daily charges would continue to apply where such efforts had not been made.

Application of revenues

- 3.25** Costs incurred by the local authority in operating a lane rental scheme may be met by the authority from the charge revenues they receive. The Regulations require that the surplus revenues, after deduction of running costs and costs of carrying out scheme evaluation, are applied by the local authority for purposes intended to reduce the disruption or other adverse effects arising as a result of works. This could include, for example:

- investment in R&D into new disruption-saving techniques or the establishment of "pipe subways" that enable apparatus to be accessed more easily and without causing disruption to traffic;
- provision of funding to support the wider application of useful techniques identified by such R&D;
- measures to improve the quality or accessibility of records about the location of underground pipes, wires and other apparatus;
- measures to help abate noise, pollution or safety hazards arising as a result of works;
- measures to improve the skills and capacity of the local authority staff charged with managing street works and assessing the proposed duration of works, over and above such measures that an authority should already be undertaking in order to fulfil their network management duty.

- 3.26** As part of their scheme, authorities will need to summarise the arrangements for determining how revenues will be applied. Authorities will be expected to establish joint working arrangements under which both the highway authority and works promoters are actively involved in deciding how net revenues are applied. To ensure transparency, the

Regulations also require authorities to keep and publish accounts of the revenues generated and how they have been spent.

- 3.27** The Secretary of State would expect authorities to apply the same principles to any net revenues generated in respect of their own highway works, consistent with the "parity" principle set out in the Network Management Duty Guidance.

Systems issues

- 3.28** Authorities will need to consider how they will disseminate information to works promoters about where and when lane rental will apply, and at what charge rates. As a starting point, authorities will need to provide these details through the National Street Gazetteer. They should also discuss with works promoters and street works system providers whether other data formats would also be helpful in enabling them to integrate lane rental information effectively into their existing works management systems.
- 3.29** More generally, scheme promoters will need to engage with their EToN software providers at an early stage of the scheme development process. They will need to consider not only the additional systems requirements for the authority itself and for works promoters, but also what information will need to be transferred between works promoters and authorities to support the lane rental scheme (e.g. in order for the authority to know whether particular works fall within the scope of an exemption). It needs to be recognised that "systems" issues are wider in scope than just EToN systems issues; authorities need to consider the full range of business processes that could be affected by lane rental. Authorities will also be expected to ensure that schemes are designed in such a way as to avoid unnecessary administrative costs for undertakers.
- 3.30** Specifically in relation to EToN and the National Street Gazetteer, authorities will need to consider with their systems developers whether their emerging proposals can be accommodated within the prevailing version of the technical specifications. This would be a distinct advantage for authorities looking to establish schemes quickly, as changes to the technical specification can be expected to take some time to prepare and implement. However, if an authority concludes that its proposals cannot be delivered within the prevailing specification, they should alert the Department and the HAUC(UK) EToN Strategy Group at the earliest opportunity so that the case for change to the technical specification can be considered.

Dispute resolution

- 3.31** Authorities will wish to consider how disputes about lane rental charges might best be handled. Although disputes may be resolved through the resolution procedure operated by the Highway Authorities and Utilities Committee (HAUC(UK)) or by independent arbitration, it would be strongly preferable for disputes to be managed and resolved by less formal mechanisms wherever possible. Authorities should consider whether it would be helpful, for example, to designate an Appeals Officer at arm's length from the day-to-day running of the lane rental scheme, who would consider disputes that cannot be resolved between the works promoter and its day-to-day contacts at the authority. The HAUC(UK) dispute resolution procedure would remain available where other arrangements have been exhausted.

Transitional issues

“Shadow running”

- 3.32** Authorities will wish to consider how to ensure a smooth implementation of any lane rental scheme. A period of shadow running prior to the formal introduction of the scheme is likely to be helpful, to ensure that systems are operating correctly. This might include the issuing of dummy invoices to works promoters.

Works already notified when lane rental comes into operation

- 3.33** Lane rental schemes will need to include suitable transitional arrangements so that works promoters do not unfairly face charges in respect of works which had already been planned and scheduled when the scheme comes into existence, but which cannot reasonably be re-scheduled to avoid chargeable periods. However, these transitional arrangements will also need to be carefully designed to avoid creating perverse incentives (for example by encouraging a large number of early permit applications aimed at avoiding charges).

4. Scheme development, approval, variation and evaluation

Consultation

4.1 Any local highway authority making an application to run a lane rental scheme will need to have carried out a full consultation on the draft scheme. Alongside the draft scheme, the consultation package should also include the authority's cost-benefit analysis and evaluation plan. The stakeholders to be consulted include:

- Every works promoter which, to the knowledge of the authority, carries out street works from time to time in their area;
- Every local highway authority (other than the street authority) and every district or borough council in whose area any street on which the proposed scheme is intended to apply is situated;
- Transport for London, where any street to which the proposed scheme applies is situated in Greater London;
- Any passenger transport executive in whose area the proposed scheme would operate;
- Emergency services operating within the area of the proposed scheme;
- Relevant regulatory authorities, including Ofgem, Ofwat, Ofcom and the Health and Safety Executive;
- Any authority that has registered an interest in receiving copies of notices or permit applications for any of the streets to which the proposed lane rental scheme applies (if applicable);
- Representative bodies for road users (including representatives of disabled people);
- Representatives of transport operators and the wider business community; and

- Any person who has made a written request to the highway authority developing the scheme asking to be consulted.
- 4.2** Formal public consultation is not the only means by which authorities developing a lane rental scheme should communicate details about the scheme to interested parties and specifically undertakers. Authorities should develop a system of open dialogue and engagement with key interested parties, particularly works promoters, throughout the scheme's development.
- 4.3** The Department is aware that some authorities have begun to develop proposals for lane rental prior to this guidance and the Regulations being finalised. Any scheme submitted to the Secretary of State will be considered in accordance with this final version of the guidance, and the Regulations as laid before Parliament, not the consultation drafts. Authorities will therefore need to ensure that their scheme proposal, and their approach to consultation, are consistent with those final versions.

Applications to operate a lane rental scheme

- 4.4** An application to operate a lane rental scheme must include a copy of the proposed scheme itself, plus supporting information to assist in the Secretary of State's assessment of the scheme. The scheme should include the following information:
- the name of the highway authority;
 - the area to which it will apply (which must be wholly within the area of the authority applying to run the scheme);
 - the streets, or part streets, over which it will operate;
 - the works to which charges will apply;
 - the level of charges to be applied (including the days and times at which charges will apply);
 - the proposed start date for the scheme (which should allow a reasonable period for undertakers to adjust their working practices before charging begins, taking account of the minimum twelve-week notice period for undertakers mentioned later in this chapter); and
 - any other information the authority considers necessary.
- 4.5** The accompanying application will need to include:
- details of the aims and objectives of the scheme, including how these aims and objectives integrate with the delivery of the authority's Network Management Duty and any other relevant objectives and policies. This section should also detail how the lane rental scheme

would complement the authority's other existing street works policies and objectives, showing what would be achieved by lane rental that could not reasonably be achieved through other tools at the authority's disposal. As well as setting out why other powers under NRSWA are insufficient, the authority will need to show that it has exhausted all reasonable opportunities to achieve the desired outcomes in a less costly manner through a permit scheme;

- a brief summary of the key features of the scheme, including the streets and works to which charges would apply, any exemptions, and the proposed charge levels;
- details of how the authority will ensure that it adheres to the "parity" principle set out in the Network Management Duty Guidance;
- an indication of any flexibility desired by the authority to make minor amendments to their scheme without the need to secure Secretary of State approval, the conditions under which the authority would wish to exercise any such flexibility, and the process the authority would follow to ensure that works promoters are properly consulted on any proposed changes in good time;
- a full analysis of the costs and benefits expected to arise from the proposed scheme, showing how the scheme will provide real scope for works promoters to reduce their exposure to charges through improved working practices. DfT's web-based Transport Appraisal Guidance can be found at <http://www.dft.gov.uk/webtag/index.php>;
- a full analysis of the costs and benefits expected to arise specifically to the business sector (including works promoters and the wider business community) and an explanation of what steps have been taken to minimise administrative costs for works promoters;
- details of the analysis underpinning the choice of streets where the authority proposes that lane rental charges should apply;
- evidence that the proposed charge levels are proportionate to the costs imposed by works on the streets where those charges will apply;
- an explanation of how works promoters can realistically avoid or substantially reduce their exposure to charges by carrying out their works in less disruptive ways, taking account of the constraints likely to be imposed by environmental health departments;
- a description of how the authority will apply the net revenues arising from the proposed scheme, including details of the arrangements for involving representatives of street works undertakers in decisions about how those revenues will be spent;

- confirmation that the authority has carried out full and proper consultation on its proposals, a summary of the results of that consultation and any changes made as a result;
- confirmation that the scheme is deliverable within the prevailing version of the EToN and NSG technical specifications (or, where changes to the specification are needed, confirmation that the issues have been discussed with the Department and the HAUC(UK) EToN Strategy Group and a timescale agreed for delivering those changes); and
- a robust plan to evaluate whether the objectives of the scheme have been met and whether the overall benefits are sufficient to justify the costs involved. This should include an evaluation methodology, a fully worked up evaluation programme setting out when the evaluation will be carried out, the baseline data against which scheme performance will be measured, and a formal statement that this evaluation will be fully resourced.

4.6 When an authority is developing a lane rental scheme, it is advisable that they notify the Department early in the development process. The Department can then discuss with the applying authority the documentation that will be needed to assess their scheme. The Department expects schemes to be fully developed when submitted for consideration but will offer advice and support in the development process to help authorities ensure that their applications are complete.

Cost benefit analysis

4.7 An application must demonstrate how the scheme will deliver the benefits and it must also justify the details of the scheme, including which roads which are included in the scheme, the charging structure etc. The application must include a full cost benefit analysis of the scheme with all the underlying data used to create the assumptions in that analysis. Benefits attributed to lane rental should not include those benefits that could reasonably be expected to arise in the absence of lane rental under other mechanisms already in place within the area of the proposed scheme.

4.8 Lane rental schemes will only be approved where they can demonstrate robustly to the Secretary of State that the scheme can reasonably be expected to generate sufficient benefits to justify the expected costs. The supporting analysis should demonstrate that the level of charge is at the appropriate level to deliver behaviour change.

The Secretary of State's assessment

- 4.9** When considering whether to approve scheme proposals, the Secretary of State will consider all relevant factors, including:
- whether the authority's proposals are consistent with relevant legislation, Codes of Practice and the expectations set out in this guidance document (including as regards charge levels, the provision of exemptions for working at less disruptive times, the expectation that every reasonable opportunity has been taken to achieve the desired outcomes through a permit scheme, and the "parity" principle set out in the Network Management Duty Guidance);
 - whether the authority has demonstrated that the proposed scheme can reasonably be expected to deliver benefits that justify the likely costs (including the likely impact on utility bills);
 - whether the authority has demonstrated that the benefits *to businesses* can reasonably be expected to exceed the costs *to businesses*, consistent with the Government's commitment to avoiding net new cost burdens on the business sector; and
 - whether a robust evaluation plan is in place, supported by a clear commitment from the authority to adhere to that plan.
- 4.10** Given that the Government is at this stage proposing no more than three "pioneer" schemes, proposals meeting the criteria will not necessarily all be approved for any initial round of "pioneer" schemes. If there are more high-quality applications than the Government is minded to support, it would generally expect to support those proposals that appear likely to deliver the highest level of benefit relative to the cost. However, prospective applicants should note that the intention is to approve lane rental in no more than one large urban area and one or two non-metropolitan areas.

The scheme order

- 4.11** Depending upon the circumstances, the Department can approve a scheme submitted by an authority or reject it. The Department can also approve the scheme with modifications. It is anticipated that the Department would liaise with the authority where modifications were considered to be necessary.
- 4.12** Before it can implement any scheme, a highway authority needs to be authorised by an Order, in the form of a Statutory Instrument, made by the Secretary of State. It is envisaged that authority to implement a scheme will be subject to certain conditions, including:

- that the authority is authorised only to implement the scheme as approved by the Secretary of State (subject to any provision in the scheme for minor variations along the lines discussed below); and
- that continuing approval is conditional on the authority evaluating the scheme in accordance with the evaluation plan supplied.

4.13 The Secretary of State's Order will also need to specify the date on which lane rental charges can begin, and in proposing a start date the authority will need to show that it is allowing a reasonable period for works promoters to prepare for the scheme. It is envisaged that, following approval, an authority would need to give an absolute minimum of twelve weeks notice to all works promoters within their area, notifying them of the authority's intention to operate a lane rental scheme from a given date, though additional notice may well be appropriate depending on the scheme and on the level of prior engagement between the authority and undertakers. The authority should also provide all works promoters with details of the final version of the scheme, as it may be different from the scheme applied for.

4.14 Once a scheme Order has been made and the scheme is in operation, if an authority wishes to make changes to the scheme set out in the Order, then the authority will need to seek the Department's agreement to making such a change as it will involve amending, or revoking and remaking, the Order. Any change would need an appropriate consultation. Authorities should discuss with the Department at the earliest opportunity if such a prospect seems likely.

4.15 Should an authority decide that they wish to cease running a lane rental scheme, they should first consult all interested parties and then apply to the Department to revoke the Order establishing that scheme.

Minor variations to schemes

4.16 When submitted to the Secretary of State for approval, lane rental schemes will need to set out the detailed parameters of the scheme. It is recognised that circumstances will change, and it may therefore be desirable to make minor variations to schemes during the lifetime of any scheme. For example, it might be desirable to bring an additional street or part of a street into the scheme as a result of new housing, retail, business or other developments that have a material effect on traffic flows. Equally, in some circumstances changing traffic flows may mean that a street ceases to be a critical part of the network, and may therefore need to be removed from the scope of the scheme.

- 4.17** Where authorities require such flexibility, they will need to set out clearly the arrangements for implementing minor variations to the scheme. In particular, any discretion to vary scheme parameters will need to be tightly constrained so that more substantial changes to a scheme cannot be made without Secretary of State consent, and schemes will need to set out these constraints. Schemes will also need to set out the process that will be followed to ensure that works promoters are consulted, and advised about decisions, on proposed variations well in advance. This will be important given the long lead-times for some works.

Evaluation and review

- 4.18** In order to secure the Secretary of State's approval, authorities will need to set out details of how they will be reviewed and evaluated. If the full evaluation plan is not included as part of the scheme itself, then at least a brief overview should be included together with a cross-reference to the detailed evaluation plan (which would need to be published). The evaluation plan would need to describe when evaluations will be carried out, the "pre-lane rental" baseline data that will be used for the purpose of comparison, the data that will be collected to measure scheme performance, and the criteria against which success will be judged. Evaluation needs to cover all impacts of lane rental schemes including the noise and safety impacts of increased working at night and at weekends and other environmental impacts, as well as impacts on traffic flows and the costs to works promoters and the highway authority.
- 4.19** The regulations permit a portion of lane rental revenues to be applied for the purposes of scheme evaluation, and it is expected that evaluation plans will include provision for independent evaluation of scheme performance, including an assessment of the overall balance between costs and benefits arising from the scheme. In the interests of parity and transparency, representatives of both the highway authority and street works promoters should be actively involved in monitoring the evaluation process.
- 4.20** It is expected that authorities will carry out an initial evaluation based on data from the first full year of normal scheme operation, and further annual evaluations thereafter. These evaluations will inform the Government's judgements about whether lane rental could usefully be applied more widely, and whether the Regulations should be extended beyond their initial seven-year period (see below).
- 4.21** It is expected that the Order granting approval to an authority to implement lane rental will include a condition requiring the evaluation plan set out within the scheme to be adhered to.

Sunset clause

- 4.22** The Regulations are expressed to expire seven years after coming into force. Depending on the Government's assessment of the performance of lane rental schemes, the Regulations could either be amended to allow them to continue in force for a further period or allowed to expire on that date. On expiry of the Regulations, any existing lane rental schemes would also have to expire.
- 4.23** Accordingly, scheme approval will be granted on a time-limited basis, with approval set to expire on the same date as the Regulations. In the run-up to the expiry date for each approval, a decision would need to be taken on whether to extend the approval for a further period. Either the Regulations or individual schemes could be revoked before the expiry date, for example if evaluations show they are manifestly failing to deliver the intended benefits at proportionate cost.