



Department
for Transport

Street and road works

Further reforms

May 2021

Department for Transport
Great Minster House
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London
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Foreword



I want to begin by thanking everyone who works in the road and street works sector for their work in recent years in modernising and transforming how works are planned and managed for the benefit of those working in the industry but also your customers, local residents and businesses and road users. I'd also like to personally thank all those who have continued the vital work in delivering services during the Covid-19 pandemic.

We have made great strides. For example, the successful transition and now use of the Street Manager digital service during the last year is starting to deliver the changes and benefits we envisaged. The updated Specification for the Reinstatement of Openings in the Highway (SROH), the first for over 10 years, became statutory guidance on 10th May 2021. We have seen the first new lane rental schemes becoming operational. And I am especially pleased to see that almost every highway authority is now running a permit scheme, bringing greater consistency across England as well as further reductions in the impact works can have on congestion.

This consultation is looking at additional improvements that can be made, to make greater use of Street Manager, to provide more detailed information on live and planned works to the general public, to add flexibility to permit schemes to help the roll-out of key infrastructure projects, and to make some important changes to street works inspections. They have been developed over the past 12 months with key stakeholders or have arisen from discussions during the continuous improvement of Street Manager.

We hope that they will lead to greater flexibility, efficiency and deliver even more benefits to road users. I am keen to hear your views on these proposals.

Baroness Vere of Norbiton
Parliamentary Under Secretary of State

Executive summary

Introduction

- 1 We estimate that there are around 2.5 million street and road works carried out in England each year. These can cause significant disruption to people's journeys and congestion which we estimate costs the economy around £4 billion. Street works are carried out by utility companies (e.g. water, gas, electricity and telecommunications who are also known as statutory undertakers) to install, repair or maintain the vital services on which we all rely. Road works are carried out by the highway¹ authority to maintain the roads or, for example, to install cycle or bus lanes.
- 2 The Government has been working across the sector in recent years on a range of measures to help ensure that works are planned, managed and co-ordinated as effectively as they can be, to improve consistency and communication across the sector, and to make accurate and up-to-date information available to road users. Our work is focused on ensuring that the most modern and effective methods possible are being used by highway authorities, utility companies and their contractors to plan and manage works. This is not just to minimise the impact that works have on congestion, but to ensure that that our systems are fit for the challenges of the future, including the digital transport agenda, that they support innovation and that they are able to deal with the rising demands for transport services and for utility infrastructure.
- 3 Recent Government initiatives have included:
 - The introduction of the transformational Street Manager digital service which, since July 2020, is being used by every utility company, highway authority and their contractors in England to plan and manage road works. Real time data on live and planned works is also now being streamed here: <https://www.gov.uk/guidance/find-and-use-roadworks-data>
 - Introduction of an updated Specification for the Reinstatement of Openings in the Highway ²(SROH version 4) – the first for 10 years – and which comes into force as statutory guidance on 10th May 2021. This new guidance
 - supports the introduction of new materials to aid compliance with air voids (compaction) requirements;

¹ Depending on the legislation, reference can also be made to the 'street authority' or 'permit authority', as well as the 'highway authority'. It is, in most cases, the same organisation.

² <https://www.gov.uk/government/publications/specification-for-the-reinstatement-of-openings-in-highways>

- rationalises the process for introducing innovation. The guidance is more open to innovation to improve the introduction of new materials and methods in street works;
 - introduces a new specification for micro trenching, crucial for the economic roll-out of broadband but only previously allowed by agreement with each highway authority;
 - permits the use of large diameter coring, which can reduce a week's site occupation to around a day but previously was only allowed by agreement with each authority.
- Almost every highway authority now operates a permit scheme. These allow for the proactive planning and management of works and have been proven to reduce the impacts of works on congestion. Every authority should have a scheme in place by summer 2021, ensuring that there will be one set of rules, consistently applied across the country, through Street Manager.
 - Allowing new lane rental schemes, which allow a highway authority to charge up to £2,500 per day for works on the busiest roads at the busiest times, reducing the impact of works on congestion. The Secretary of State has recently approved new schemes in Surrey and an amended scheme by Transport for London (TfL) on its network in London. Other schemes are in development.
 - Regulations were amended in July 2020 to support the introduction of Street Manager and requiring, for instance, notices to be sent within two hours of works starting or stopping on week days, amending the timelines associated with road restrictions issued under Section 58 of the New Roads and Street Works Act 1991 (the 1991 Act), and amending the definition of major works.
- 4 This consultation document presents a series of additional reforms to regulations covering works. They have come to light during the development and introduction of Street Manager and the update to the Coordination Code of Practice³. They also aim to support the Government's Manifesto commitment to roll out full fibre and gigabit-capable broadband to every home and business across the UK by 2025. Works by telecoms companies currently account for one third of all works, and this number is estimated to triple over the next few years as a result of broadband roll-out and installing and upgrading the networks on which we have all come to rely.
- 5 The main proposals presented include:
- Introducing a new type of flexi permit that would cover a number of standard and minor works in a certain area for a period of time.
 - Allowing phases within a permit so that up to date information on traffic management can be sent to Street Manager and then published.
 - Including notifications about Section 58 and Section 58A/Schedule 3A road restrictions in Street Manager.
 - Requiring works start and stop notices to be sent within two hours at weekends; and requiring highway authorities to submit start and stop notices for their works so that up to date information can be provided via Street Manager to road users.

³ <https://s3.eu-west-1.amazonaws.com/static.iaguk.org/downloads/Code-of-Practice-for-Co-ordination-HAUCEngland-Edition-2020.pdf>

- Three changes relating to street works inspections: amending the way an inspection unit is calculated; using performance to calculate the number of sample inspections carried out each year so that poor performers are inspected more frequently; and consolidation of the fee that needs to be paid for re-inspections of reinstatements that have failed a previous inspection.
 - Amending the list of reasons highway authorities can use to designate roads as traffic sensitive.
 - Other amendments relating to: whether we should have additional information provided about works as part of the permit application covering, for example, traffic light heads placed on adjacent streets; an additional amendment to the definition of major works; and requiring highway authorities to notify a utility company via Street Manager that an overrun charge is being applied.
- 6 These proposals would involve amending the following secondary legislation:
- The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 (the 2007 Noticing Regulations).
 - The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009 (the 2009 Charges Regulations).
 - The Traffic Management Permit Scheme (England) Regulations 2007 (the 2007 Permit Regulations).
 - The Street Works (Inspection Fees) (England) Regulations 2002 (the 2002 Inspection Regulations).
- 7 Finally, we propose including in the permit scheme statutory guidance⁴ how the reasonable period should be calculated in areas that now operate permit schemes
- 8 A consultation impact assessment is being published with this consultation and can be found on the website here: <https://www.gov.uk/search/policy-papers-and-consultations>
- 9 This consultation relates to England.

⁴ <https://www.gov.uk/government/publications/street-works-the-2007-permit-scheme-regulations-as-amended-in-2015>

How to respond

The consultation period will close on **Friday 23rd July 2021**. Please ensure that your response reaches us before the closing date.

If you would like further copies of this consultation document, it can be found at <https://www.gov.uk/dft#consultations> or you can contact streetmanager@dft.gov.uk if you need alternative formats (Braille, audio CD, etc.).

Please complete the online response form that can be found at <https://www.gov.uk/dft#consultations>

or email your consultation response to Streetmanager@dft.gov.uk

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 it clear who the organisation represents and, where applicable, how the views of members were assembled.

Due to remote working for the foreseeable future and health and safety issues with handling physical mail, we strongly encourage responses by the online form or by email. If you are unable to respond by the online form or by email, we would invite you to please let us know by asking someone to email on your behalf. If none of the above is possible, then we invite you to provide responses to:

The street works team
Department for Transport
3rd Floor Great Minster House
33 Horseferry Road
London SW1P 4DR

Freedom of Information

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

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.

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.

The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

Confidentiality and data protection

The Department for Transport (DfT) is carrying out this consultation to gather your views on proposals relating to works and how they are managed by utility companies and highway authorities. This consultation and the processing of personal data that it entails is necessary for the exercise of our functions as a government department. If your answers contain any information that allows you to be identified, DfT will, under data protection law, be the Controller for this information.

As part of this consultation, we're asking for your name and email address. This is in case we need to ask you follow-up questions about any of your responses. You do not have to give us this personal information. If you do provide it, we will use it only for the purpose of asking follow-up questions. Responses will be held for 5 years.

DfT's privacy policy has more information about your rights in relation to your personal data, how to complain and how to contact the Data Protection Officer. You can view it at <https://www.gov.uk/government/organisations/department-for-transport/about/personal-information-charter>.

1. Permits

The current situation

Flexi permits

- 10 Regulation 9 of the 2007 Permit Regulations requires that ‘A permit scheme shall require **each application for a permit to be limited to one street.**’
- 11 Almost every highway authority now operates a permit scheme, and the few that do not will introduce one during 2021. This means that works promoters from both utility companies and the highway authority will apply for one permit for works on each individual street or Unique Street Reference Number (USRN). Works are defined as minor (less than 3 days duration), standard (between 4 and 10 days duration) and major (works with a duration of 11 days and over). The full definitions can be found in Regulation 3(1) of the 2007 Noticing Regulations. Around 65% of all works are minor or standard works. Emergency or immediate works can also be carried out. In these cases, permits need to be submitted retrospectively within 2 hours of works starting on site (see Section 57 of the 1991 Act).
- 12 When applying for a permit, an authority or utility promoter of the works need to show due consideration when undertaking any repair activities about how they will manage the risk of potential nuisances such as noise, dust or artificial lights at sensitive times of the day i.e. next to a school during exams or place of worship. It is also important that, when carry out works, care is taken to reduce the risk of damage to nearby tree roots and above ground trunks and branches. Promoters should be aware of NJUG’s Volume 4 Guidance; Guidelines for the Planning, Installation, Maintenance and Repair of Utility Apparatus in Proximity to Trees 2007⁵
- 13 Between 1 July 2020 (the start of the new Street Manager digital service) and 28th February 2021, 1,745,694 permits have been applied for by works promoters. Around 7.5% of permits are refused for various reasons. In the same period of time, 1,412,406 works have been carried out. There may be more than one permit submitted for a work, which may cover several streets/USRNs.
- 14 On average, 20% of permits that are applied for, assessed, and approved are then cancelled. Utility companies will have paid a fee for their permits. A range of reasons for this have been noted in Street Manager including:
 - the permit no longer being needed as the customer has cancelled the order
 - finding issues on-site or bad weather so the work needs to be re-scheduled

⁵ <http://streetworks.org.uk/wp-content/uploads/V4-Trees-Issue-2-16-11-2007.pdf>

- works needing to be rescheduled if a works gang has been held-up on a previous job or has been sent to another, more urgent one
 - errors in the original permit application including incorrect dates, USRN or highway authority
 - realising that traffic management is needed
 - some works promoters apply for duplicate permits when only one might be needed to help with their fluidity, for example, a permit for a minor work on Monday to Wednesday and another for Thursday to Saturday. The second one may then be cancelled when the actual time the gang can be on-site is confirmed.
- 15 There is a growing volume of permits being requested due to major investment and infrastructure programmes from all utility companies, more developments including housing developments, highway authority investments in road maintenance and traffic management and to deliver the Government's Manifesto commitment to roll-out broadband. One third of all permit applications are from telecoms companies, with this number expected to triple over the next few years.
- 16 Highway authorities are therefore going to need to deal with and process more permit applications. Authorities are required by regulations to respond within specified timescales and, if they do not, the permits 'deem', the works promoter can go ahead and carry out the work and, if they are a utility company, do not have to pay the permit fee (regulation 16 of the 2007 Noticing Regulations). Around 6% of permits 'deemed' in recent months without any assessment by the authority. This meant that, in January 2021 for example, around 5,000 works took place under 'deemed' permits.
- 17 The statutory guidance on permit schemes⁶ states that authorities have 2 days to respond to minor permits, and 5 days to standard and major permit applications. Major works' applications have to be submitted three months in advance of the planned start time. An authority can agree an early start for a major work if the promoter wants to start the work, for example, 6 weeks or 2 months after submitting the major permit application. Agreeing to early starts can involve further administration time from both authorities and promoters in negotiating start dates.
- 18 Given the wide use of permits now across England, the growing demand and the new ways of working that Street Manager is able to support, the Government would like to consider if there are more efficient ways of dealing with permits that would deliver benefits for both promoters and authorities. We would, in particular, like to consider whether the 'one permit per USRN' rule should be changed to improve the efficiency and flexibility when it comes to carrying out a number of short duration minor or standard works in an area over a short period of time, and whether this will lead to fewer cancelled permits, fewer permits 'deeming', a better use of time and reduced administration costs for both authorities and works promoters.

⁶ <https://www.gov.uk/government/publications/street-works-the-2007-permit-scheme-regulations-as-amended-in-2015>

Phasing within a permit

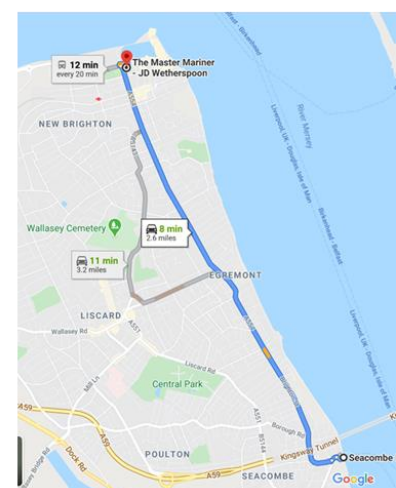
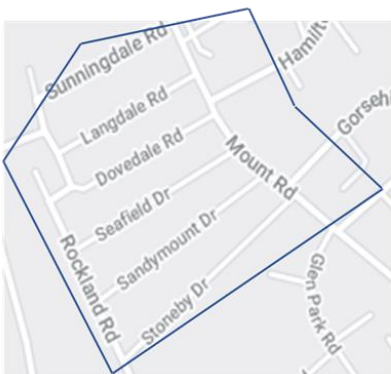
- 19 Regulation 9(8) of the 2007 Permit Regulations states that ‘A permit scheme may provide that, where it is proposed that the relevant specified works are to be carried out in more than one phase, **a separate permit shall be obtained in respect of each phase.**’
- 20 There are occasions when a permit is needed to cover works that may, for example, take six weeks. Yet the traffic management, lane closures or other measures that will impact road users may only be in place for the middle two weeks of that permit. The remainder of the time may involve work in the footway or unused time at the start and the end of the works. The current 2009 Charging Regulations (regulation 6) mean that actual works start and stop notifications are sent to the authority via Street Manager at the start and end of the works covered by the permit. Updates do not need to be sent, however, when the actual traffic management or lane closures are in place. This, more detailed level of information, is not therefore available to network managers or road users through the open data that is available from Street Manager⁷.
- 21 We know from other research being carried out across the DfT as part of our Transport Data Strategy about the value of local transport data, and the need for greater accuracy and more real-time updates about how the network is being affected by works. The Government would therefore like to consider how we can achieve this through the use of permits and Street Manager.

Proposed amendments to legislation

Flexi permits

- 22 To address the issues identified above, we propose to amend the 2007 Permit Regulations to allow any works promoters from utility companies and highway authorities to apply for a new type of flexi permit. This would be one permit that would cover a number of minor and standard works in a specified area (multiple USRNs) for a limited period of time.

Examples of flexi permit: it could cover a number of works in an area, or works that spanned a main and side roads, or works that spanned one road split into different USRNs.



⁷ <https://www.gov.uk/guidance/find-and-use-roadworks-data>

- 23 A flexi permit would allow a works promoter to apply for one permit for a period of time. They would then be able to carry out any work in any street that was covered by the flexi permit. The promoter would be required to send updates within 2 hours of each work covered by the flexi permit starting and/or stopping to the authority via Street Manager so the authority and road users would know which job was taking place on which day or at what time. We could also amend the 2009 Charging Regulations to add a new requirement to send a 'flexi permit cleared' stop notice when all the works included in the flexi permit have been completed. This would let the authority and road users know that the area was now clear.
- 24 We propose to set some boundaries in the regulations around use of a flexi permit to ensure that this change meets the desired outcomes and to mitigate against any issues that could arise from their use. We are proposing the following as boundaries but we are interested in views about whether these are appropriate or whether different ones would be more effective.
- The overall duration of a flexi permit would be for no longer than 4 weeks or 28 calendar days.
 - During this 4 week period, only minor and standard works could be included in and covered by the flexi permit, so works with a duration of 10 days or less. This is because major works need additional planning and coordination with, for example, bus operators and need to be time-bound. Immediate or emergency works could not be included within a flexi permit since it is not possible to plan when these happen.
 - A flexi permit could cover up to 10 streets/USRNs.
 - Works included within a flexi permit would need to be no more than 500 metres apart and the total area for a flexi permit would be no more than 1 mile.
 - Works on reinstatement category 0 or 1 roads could not be included in a flexi permit. There is a question below about whether we should also exclude works on category 2 roads that are designated as traffic sensitive. Or could the authority add a condition to the flexi permit that the work on that road needs to take place on certain dates within a flexi permit period? The list of conditions applying to permits could be updated accordingly.
 - A flexi permit could not be used for works where a Temporary Traffic Regulation Order is needed since, for example, road closures need to be time-bound/minimised.
 - The reinstatement of each job would need to be completed immediately after each work has been completed. The work could not, for instance, be left as an open site and reinstated closer to the end of the flexi permit period since this would be un-safe.
- 25 Other rules that would be required via regulations around use of a flexi permit would include the following.
- Flexi permits applications would need to be submitted 10 days in advance to give the authority enough time to carry out the assessment.
 - Authorities would need to respond within 5 days.
 - The maximum fee for a flexi permit would be the same as for a major work on a category 3 and 4 road, i.e. £150, to reflect the additional time needed to assess them. Discounts could be offered, for example, if more than one promoter was

sharing the flexi permit. The permit scheme statutory guidance would be updated to include this additional fee category.

- Works start and stop notices would need to be sent within 2 hours for each individual work within a flexi permit.
- Notifications of reinstatements under Section 70 of the 1991 Act would need to be sent for each individual work within a flexi permit.
- It is envisaged that existing rules around, for example, permit variations and Section 74 (of the 1991 Act) overrun charges would apply to the flexi permit as now with regular permits, with necessary amendments to reflect the flexi permit regime.
- Other promoters could share a flexi permit for any joint works.
- To help the authority know what flexi permit applications are likely to be submitted, we propose to include a requirement for promoters to submit a forward plan showing the programme of works to be carried out in an area at least 30 days before submitting a flexi permit application. Flexi permits applications could only then be submitted if they are linked to a forward plan. This would help the authority to coordinate works more effectively, and other promoters would be able to see where flexi permits might be being applied for so they could either share the flexi permit or re-arrange the timing of their works. An area covered by a forward plan might cover a number of flexi permits.
- Penalties, as now, would be applied, for example, for working without a permit including Fixed Penalty Notices (FPNs).

26 We believe there would be benefits from flexi permits. The accompanying Impact Assessment provides more details of what these might be and we have quantified the potential benefits where this might be possible in the assessment. Benefits could include:

- Better planning of work and submission of forward plans
- More collaboration and joint works
- Better planning
- Fewer requests for 'early starts'
- Fewer cancellations
- Greater flexibility
- More efficiency, as there would be one application and assessment instead of 10 individual permit requests
- Fewer permits deemed as a result of the authority not being able to deal with volumes of permit applications which, in return, will reduce the number of lost permit fees
- The authority would receive more advance notice of minor and standard works and, potentially, non-registrable works linked to the permit
- Fewer permits being refused

27 We understand some authorities may have concerns about flexi permits and are interested in what these might be.

28 We have considered whether a flexi permit could lead to road space being booked for a longer period of time and whether this might reduce the flexibility for other works promoters, or their ability to carry out a job. It is, however, unlikely that an authority would allow another promoter to work on the same road a week or two later. Promoters who also need to work in a flexi permit area would have more warning of the time works were being planned and could collaborate with

the original promoter and share the flexi permit. The 'flexi permit complete' notice could even release the road space sooner if all the works were completed faster than originally planned. We have concluded that there are issues with road space being booked unnecessarily with the current situation (see also the number of permits being cancelled and un-used) and that the use of flexi permits could make slight improvements.

- 29 We have considered in the Impact Assessment the potential impact on permit fees and the impact on the operation of authority's permit schemes where fees from utility companies cover the cost of dealing with their permit applications. We know that authorities lose some fees at the moment due to permits deeming. There may be an increase in these losses if the numbers of permits increase and the authority does not have enough resource to deal with them. There will be improved efficiency in terms of administration costs. We are suggesting a fee rate that is equivalent to dealing with a major work on a reinstatement category 3 and 4 road. In some areas, this is more than the fee for 10 x minor works.
- 30 We believe flexi permits will benefit some sectors more than others, for example, those promoters who do more standard and minor works like telecommunications and electricity companies. This who carry out more major works like gas and water companies may not benefit as much from the change. We are interested to know whether highway authorities would use flexi permits to carry out a number of minor or standard highway improvements.

Phasing within a permit

- 31 We propose amending the 2007 Permit Regulations and the 2009 Charging Regulations to allow phasing within a permit. This will mean that details of the phases and the proposed times would be included in the permit applications for standard and major works.
- 32 Phases would need to include information about when traffic management, footway or carriageway closures are in place. There could be no phases within a permit, or one or several phases in a standard or major work. We assume there would be no phases within a minor work.
- 33 The 2009 Charging Regulations would be amended to require updates to be sent to Street Manager within 2 hours of each phase beginning or ending. This will ensure that more accurate and more detailed updates can be provided to road users through Street Manager's open data stream. So they will, for example, know when the permit starts but, more importantly, when the traffic management or carriageway or footway closures are in place and their journey will be affected. There would be a penalty for late submission in line with other notices included in the 2009 Charging Regulations.
- 34 Information on phases would be mandatory fields that would need to be submitted to Street Manager. We suggest that any variations or updates to the permit to reflect more accurately the timing of the phases should be free for promoters to do.

Q1: Should we create a new type of flexi permit to cover a number of minor and standard works in a limited area for a limited period of time?

Yes?

No?

If you have responded 'no', please explain why.

Q2: If you have said yes to Question 1, do you think that we should:

A: exclude works on reinstatement category 2 roads that are designated as traffic sensitive;

or

B: include works on reinstatement category 2 roads that are designated as traffic sensitive but add a condition to the flexi permit that the work on that road needs to take place on certain dates within a flexi permit period?

A?

B?

Q3: If you have said yes to Question 1, do you have any comments on the proposed framework for how flexi-permits would work (see paragraphs 24 and 25 of the consultation document)?

Yes?

No?

If yes, please add your comments here.

Q4: Should we allow phasing within a permit so that more accurate information is provided for road users about when traffic management or road closures are in place?

Yes?

No?

If you have responded 'no', please explain why.

2. Section 58 and Section 58A Road Restrictions

The current situation

Notices and information exchange

- 35 Highway authorities can restrict street works taking place following substantial road works (Section 58(1) of the New Roads and Street Works Act 1991) and following substantial street works (Section 58A and Schedule 3A of the 1991 Act). The aim of these restrictions is to protect a highway authority's investment in their road network and to prevent, for example, a recently resurfaced or newly built road from being dug up immediately afterwards.
- 36 Substantial road works are defined in Regulation 11(1) of the 2007 Noticing Regulations as: works for road purposes which comprise a reconstruction, widening, alteration in the level, resurfacing or specialist non-skid surface dressing of the part of the highway concerned and which if carried out –
- (a) in a footpath, footway, bridleway or cycle track
 - (i) extend for more than 30 metres of continuous length; and
 - (ii) in the case of a footpath or cycle track, result in the width available for pedestrians or cyclists, as the case may be, being reduced by more than two-thirds;
 - (b) in the carriageway –
 - (i) extend for more than 30 metres of continuous length; and
 - (ii) result in the use by vehicles of the carriageway being prohibited or the width of carriageway available for vehicular traffic being reduced by more than one-third.
- 37 Regulation 12(1) of the 2007 Noticing Regulations defines substantial street works as meaning major works. Major works are defined in Regulation 3(1) of the 2007 Noticing Regulations as:
- (a) street works which would normally be planned or known about at least six months in advance of the date proposed for the works⁸;
 - (b) street works, other than immediate works, where:
 - (i) the street authority has indicated to an undertaker; or
 - (ii) an undertaker considers,

⁸ See section 5 of this consultation for further proposals relating to the definition of major works.

that an order under section 14 of the Road Traffic Regulation Act 1984 (temporary prohibition or restriction on roads) is required; or

(c) street works, other than immediate works, the planned duration of which exceeds ten days;

38 In accordance with Regulation 11(2) of the 2007 Noticing Regulations, Section 58 restrictions can be in place for:

- 3 years in relation to substantial road works involving reconstruction;
- 2 years in relation to substantial road works involving resurfacing or an alteration in the level of the highway;
- 1 year in relation to any other substantial road works carried out in a traffic-sensitive street or a street in road category 0, 1 or 2 which is not a traffic-sensitive street; and
- 6 months in relation to any other substantial road works carried out in a street in road category 3 or 4 which is not a traffic-sensitive street.

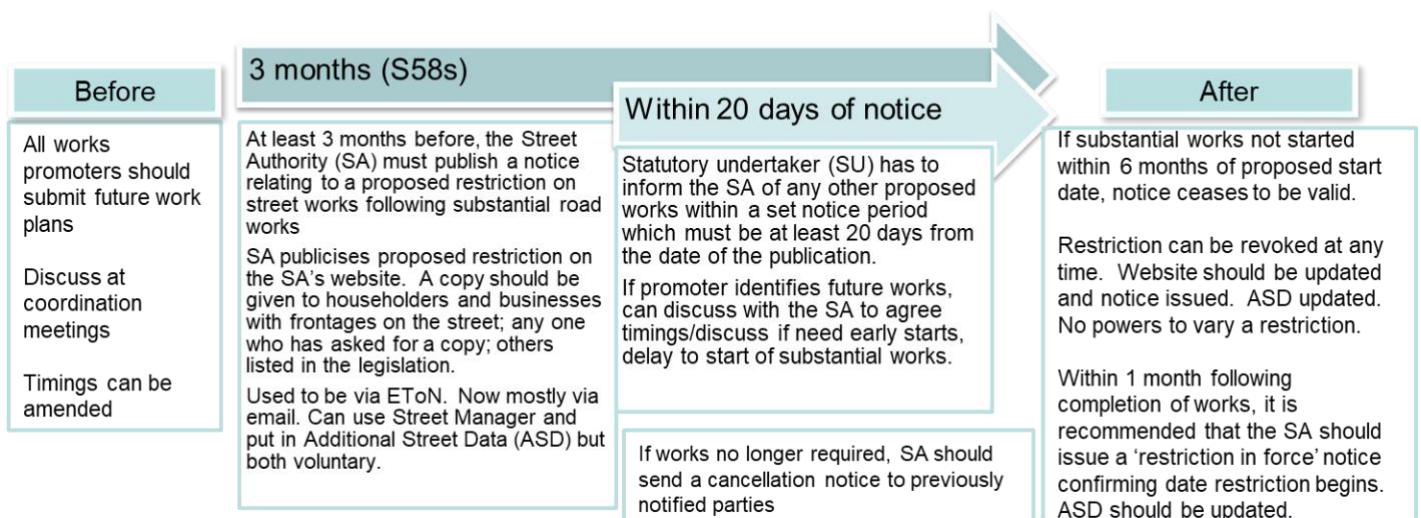
39 These timelines were amended in 2020 following consultation.

40 In accordance with Regulation 12(9) of the 2007 Noticing Regulations, Section 58A/Schedule 3A restrictions can be in place for a maximum of:

- 1 year in relation to traffic-sensitive streets and streets in road category 0, 1 or 2 which are not traffic-sensitive streets; and
- 6 months in relation to streets in road category 3 or 4 which are not traffic-sensitive streets.

41 The DfT does not plan to amend or reduce these timelines any further.

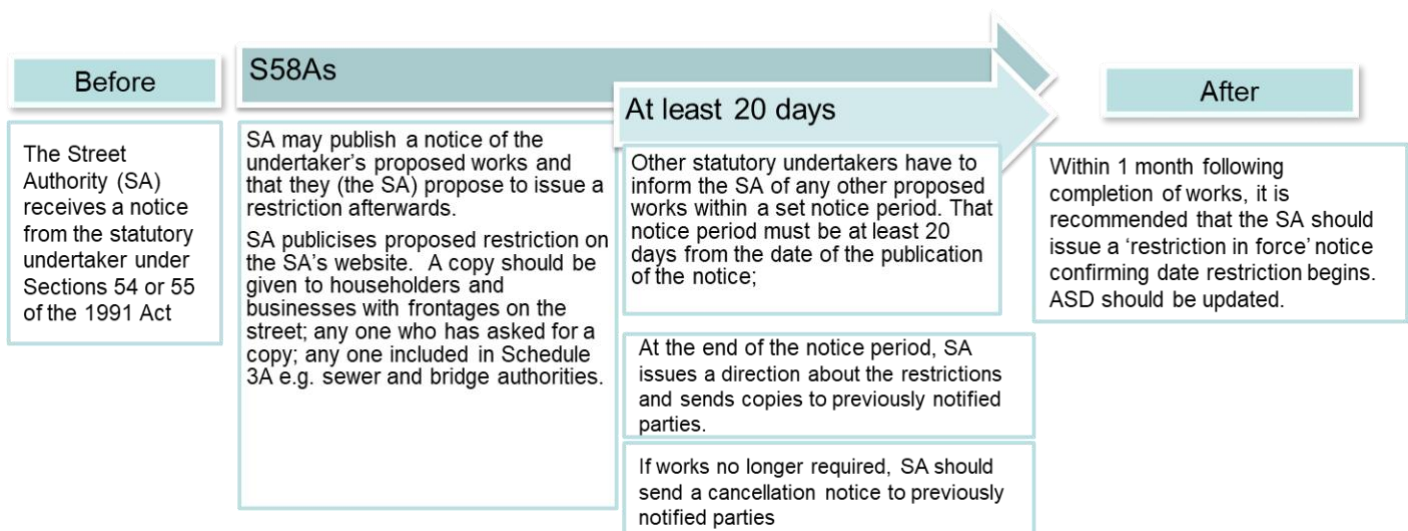
42 The diagram below summarises the current requirements for information exchange for **Section 58 notices** about proposed restrictions and updates on the start and end dates of restrictions.



43 In more detail:

- At least 3 months before, the Street Authority (SA) must publish a notice relating to a proposed restriction on street works following substantial road works on any website maintained by the authority for the purpose of providing information to the public (Regulation 11(4) of the 2007 Noticing Regulations).
- A copy of the notice must be given to parties prescribed in the legislation including:
 - the occupier of any premises which have a frontage onto the part of the highway to which the proposed restriction relates;
 - any other person who has made a written request asking for a copy of any such notice; and
 - others set out in sub-section 3 of Section 58 of the 1991 Act, for example, the sewer or bridge authority.
- The notice of a proposed restriction ceases to be effective if the road works to which it relates are not substantially begun within six months of the later of:
 - (a) the date specified in the notice as being the date on which it is proposed to begin the works; or
 - (b) the completion of all works executed as a consequence of any notice given to a SA in accordance with regulation 9(3) which states that an undertaker should give notice of any proposed works not more than 20 days from the notice of a proposed restriction.

44 The diagram below summarises the current requirements for information exchange for **Section 58A notices**.



45 In more detail, the process for Section 58A notices is as follows:

- the Street Authority (SA) receives a notice from the undertaker under Sections 54 or 55 of the 1991 Act that the undertaker is proposing to execute substantial

street works in a highway (Paragraph 1(1) of Schedule 3A of the 1991 Act);

- the SA may publish a notice of the undertaker's proposed works and that they (the SA) propose to issue a restriction afterwards (Paragraph 2(1) of Schedule 3A of the 1991 Act);
 - other utilities companies have to inform the SA of any other proposed works within a set notice period (Paragraph 2(d) of Schedule 3A of the 1991 Act). That notice period must be at least 20 days (so could be more than 20 days) from the date of the publication of the notice (Regulation 12(2) of the 2007 Noticing Regulations);
 - copies of the notice must be given to parties prescribed in the legislation including:
 - the occupier of any premises which have a frontage onto the part of the highway to which the proposed restriction relates;
 - any other person who has made a written request asking for a copy of any such notice; and
 - others set out in Paragraph 2(4) of Schedule 3A of the 1991 Act, for example, the sewer or bridge authority.
 - after the expiry of the notice period, the SA may issue a direction as to the proposed restrictions (Paragraphs 3(1) and 4(1) of Schedule 3A of the 1991 Act).
- 46 Most of this information exchange is via email since the introduction of the Street Manager digital service for planning and managing works in July 2020 and move away from EToN⁹. Notices should be published on an authority's website as well, but this means utilities need to pro-actively check these for every authority. There is no consistent method of communication or information about proposed restrictions or when new ones are planned to come into force.
- 47 Statutory undertakers/utility companies therefore do not often hear about proposed restrictions or changes until it's too late in the planning process and this can affect their operations. It can also lead to cancelled permits, a need to re-schedule works or delays to delivering customer orders.

Exemptions

- 48 There are exemptions from these restrictions in legislation. The exemptions that can be used for Section 58 notices are set out in sub-section 5 of Section 58 of the 1991 Act and are:
- emergency works;
 - any works with the consent of the Street Authority, which shall not unreasonably be withheld; and
 - in such other cases as may be prescribed.
- 49 The following exemptions to Section 58 notices are included in Regulation 11(8) of the 2007 Noticing Regulations, so still apply in the few areas that do not yet

⁹ The Electronic Transfer of Notifications (EToN) was the system used before Street Manager. The technical specification for this was withdrawn on 1st July 2020.

operate permit schemes:

- Street works that do not involve breaking up the street.
 - Works required to respond to a request for a new service or supply to a customer which was not received at a time when it was practicable for the works to be done before the date on which the restriction began; and carried out more than 19 days from that date.
 - Works carried out under regulation 16(3)(b) of the Gas Safety (Installation and Use) Regulations 1998 (primary meters).
 - Works to comply with an improvement notice under section 21 of the Health and Safety at Work etc Act 1974 (improvement notices); or as a consequence of a prohibition notice under section 22 of that Act (prohibition notices).
 - Works required to comply with a programme approved under regulation 13A of the Pipelines Safety Regulations 1996 (iron pipelines); and could not have been identified before the restriction began.
- 50 In the case of Section 58A notices, exemptions are set out in Paragraphs 3(5) and 5(2) of Schedule 3A to the 1991 Act and Regulations 12(8) and 12(10) – (12) of the 2007 Noticing Regulations. The exemptions included cover the same categories as for Section 58 Notices.
- 51 The 2007 Permit Regulations modifies the 1991 Act in relation to specified works in specified streets. This means that the exemptions set out in the 2007 Noticing Regulations do not apply to these types of works. Almost every highway authority now operates a permit scheme and those that do not plan to have one in place later in 2021. Therefore, only the exemptions in the 1991 Act applies in permit areas, leaving each work to be discussed with the authority on a case by case basis. This can add to the administration time needed to deal with restrictions for both authorities and utility companies, it can affect effective planning, and approaches and policies may be inconsistent across different authority areas. There may also be disagreements.

Proposed amendments to legislation

Notices and information exchange

- 52 Notices are currently required as follows:
- For section 58 road works, the authority needs to give 3 months' notice to statutory undertakers before substantial works are planned that will lead to restrictions on completion.
 - For section 58A/Schedule 3A street works, the process is set out in paragraph 44 above.
 - A statutory undertaker needs to notify the authority that they have works planned.
 - The authority needs to issue a completion of notified works notice under Schedule 3A for substantial street works (Section 58A). The Co-ordination Code of Practice recommends that, as soon as reasonably practicable and, in any case,

within 1 month, following completion of the works, the authority should also issue a section 58 restriction in force notice confirming the date restrictions began.

- 53 In addition, it is recommended in the Coordination Code of Practice that the authority sends a cancellation notice if works or restrictions are no longer required.
- 54 We propose amending the 2007 Noticing Regulations to require that Section 58 and Section 58A/Schedule 3A notices are sent using Street Manager, so that Street Manager becomes the single source of information about Section 58 and 58A road restrictions. This should ensure that timely information is provided to all the statutory undertakers who need to be informed, it will benefit both undertakers and highway authorities when it comes to planning restrictions and scheduling works, and it will provide consistency and efficiency in terms of process and communications.
- 55 Authorities would still need to email other interested parties, for example, householders with frontages on the street.

Exemptions

- 56 We propose adding the exemptions listed in the 2007 Noticing Regulations (set out in paragraphs 48-49 above) to the 2007 Permit Regulations so that they are available for use in highway authority areas that operate permit schemes. This will help to overcome the issues that have been identified above.
- 57 We also propose adding a new exemption to the 2007 Permit Regulations for works being carried out as a joint work with another works promoter to encourage collaboration, trench or permit sharing or use of service tunnels/shared ducts.

Q5: Should it be mandatory to use Street Manager for notices relating to Section 58 and Section 58A/Schedule 3A road restrictions?

Yes?

No?

If you have responded 'no', please explain why.

Q6: Should the exemptions listed in the 2007 Noticing Regulations be added to the 2007 Permit regulations?

Yes?

No?

If you have responded 'no', please explain why.

Q7: Should an additional exemption for joint works be included in the 2007 Permit regulations?

Yes?

No?

If you have responded 'no', please explain why.

3. Works Start and Stop Notices

The current situation

- 58 Since 1st July 2020, statutory undertakers are required by regulation 15 of the 2009 Charges Regulations to submit to Street Manager regulation 6 street works notices in line with the table below. This regulation currently applies to weekdays and is intended to ensure that timely and accurate updates are provided to the authority and to road users about when street works are actually taking place. A permit may cover a period of time, with the street works in place for part of it. Real time updates are therefore valuable information.
- 59 The table below shows the current legislative requirement for street works:

Works starting/closing 00.00am-7.59am on a working day	Notices to be sent by 10.00am the same day
Works starting/closing 8.00am-4.30pm on a working day	Notices to be sent 2 hours after start or completion of works ¹⁰
Works starting/closing 4.31pm-11.59pm on a working day	Notices to be sent by 10.00am the next working day
Works starting/closing on a non-working day	Notices to be sent by 10.00am the next working day

- 60 The definition of working day excludes weekends and bank holidays. This means that any works that start after 4.30pm on a Friday do not need to be sent until the following Monday or Tuesday if the Monday is a Bank Holiday. The authority and road users are not updated about any works that have started or been completed over the weekend.
- 61 The requirements in Regulation 6 of the Charging Regulations currently only apply to statutory undertakers carrying out street works. Road works carried out by highway authorities are not covered by these requirements, which means that road users are not updated in a timely or consistent way about one third of all the works that take place.

Proposed amendments to legislation

- 62 We propose amending the 2009 Charges Regulations to require notices of when

¹⁰ To be clear, this means notices for works that start or complete, for example, at 4.29pm need to be sent by 6.29pm. Works include all types of works (major, standard, minor and immediate works).

works have started or when they have been completed to be given within 2 hours on any day, including weekends, so that more accurate updates can be provided to authorities and to road users through Street Manager and its open data stream.

- 63 This would mean the requirements would be as shown in the table below and would apply to any day, regardless of whether it is a weekday, weekend or Bank Holiday.

Works starting/closing 00.00am-7.59am	Notices to be sent by 10.00am the same day
Works starting/closing 8.00am-4.30pm	Notices to be sent within 2 hours after start or completion of works
Works starting/closing 4.31pm-11.59pm	Notices to be sent by 10.00am the next day

- 64 We propose amending the 2007 Permit Regulations to require highway authorities to submit notices of when works have started or when they have been completed for their own 'works for road purposes' in line with the requirements set out in the table above.
- 65 This will mean that more accurate and comprehensive data will be submitted to authorities and road users, and will bring parity of treatment to authorities whose works can often cause the same levels of congestion as utility companies.

Q8: Should the requirements for works start and stop notices also apply at weekends and Bank Holidays?

Yes? No?

If you have responded 'no', please explain why.

Q9: Should the requirements for works start and stop notices also apply to 'works for road purposes' carried out by highway authorities?

Yes?

No?

If you have responded 'no', please explain why.

4. Inspections

The current situation

Inspection units

- 66 Highway authorities are empowered under Section 72 of the 1991 Act to carry out investigatory works to check whether a utility company has complied with the reinstatement standard set out in the Specification for the Reinstatement of Openings in the Highway (SROH)¹¹ which is statutory guidance issued under Section 71(4) of the 1991 Act.
- 67 The authority is allowed to charge the utility company a fee in respect of each inspection carried out. The fee is currently set in Regulation 3(1) of 2002 Inspection Regulations as £50 for each unit of inspection.
- 68 The current definition of a unit of inspection uses a very complex formula set out in Regulation 3(3) which is.
- a single excavation not exceeding 200 metres in length; or
 - more than one and not more than 5 excavations and, in the case of works relating to service pipes and service lines, not more than 10 excavations. This definition is subject to additional requirements for proximity and overall length set out in Regulation 3(3)(b)(i)-(iv); or.
 - in the case of an excavation longer than 200 metres each length of 200 metres within the length of that excavation or the balance of such length.
- 69 Some works can cover a large area and may be divided into several inspection units, each one potentially attracting a fee of £50 per inspection. Some smaller works may only be one unit.
- 70 The 2002 Inspection Regulations allow authorities to charge up to a set number of inspections each year. The definition of a chargeable inspection is set out in Regulation 3(2). Authorities can carry out as many as they like but can only charge for a random sample of not less than 10% and not more than 10.5 % of each of three phases of works, and not more than 30% of the total number of reckonable units of inspection in any year. The three phases of works are:

¹¹ <https://www.gov.uk/government/publications/specification-for-the-reinstatement-of-openings-in-highways>

- Category A – the period when the works are being carried out, ending with the day on which interim or permanent reinstatement is completed
 - Category B – the period of six months starting with the day on which the interim or permanent reinstatement is completed
 - Category C – the period of three months immediately preceding the end of:
 - (i) in the case of excavations to a depth exceeding 1.5 metres to the top of the apparatus over a length of 5 metres or more, 3 years from completion of permanent reinstatement,
 - (ii) in any other case, 2 years from the completion of permanent reinstatement.
- 71 An authority will calculate the sample inspection rate each year in line with Regulation 3(5) of the 2002 Inspection Regulations. It would be helpful if Street Manager could calculate this sample rate and inspection units to help both utility companies and authorities, but the current way to calculate inspection units is complex, time consuming and expensive in terms of administration time. The calculation is also prone to discrepancy which can lead to time-consuming discussions and arguments between authorities and utility companies about the correct figure.

Sample inspections

- 72 As noted above, authorities will calculate a sample rate of chargeable inspections each year. Regulation 3(5) states that
- (5) For the purposes of this regulation...the number of reckonable units of inspection in a year is the average of the number of units of inspection for the undertaker per year calculated over the three immediately preceding years.
- 73 The sample rate set out in Regulation 3(2) of not less than 10% and not more than 10.5% of each phase of works (categories A, B and C) and not more than 30% of the total number of reckonable units in any year is applied to all utilities regardless of performance or the number of defective reinstatements and inspection failures. So a good performer, which passes more than 95% of inspections is inspected as much as, and pays the same rate of £50 per inspection, as those that may only pass 70% of inspections or have high defect failure rates.
- 74 We know from Street Manager that failure rates do vary. Data for the month of September 2020, showed category A failure rates varied from 1% to 46%, category B from 3% to 19%, and category C from 2% to 13%. These figures are based on a sample size of at least 100 inspections and show the wide range in performance across works promoters.
- 75 The Code of Practice for Inspections¹² states that, where more than 10% of the sample inspections of a utility's works in a three-month period reveal a reinstatement defect, the authority should issue them with an Improvement Notice. Separate notices exist for non-compliant reinstatements and inadequate signing, lighting and guarding. Where a utility carries out 50 or fewer inspection

¹² <https://www.gov.uk/government/publications/street-works-inspections>

units of work in a year, the issue of such an improvement notice is at the discretion of the authority.

- 76 The utility company should then agree an Improvement Plan with the authority. These Improvement Plans should include arrangements regarding the recovery of costs or expenses incurred by the authority. However, any such recovery is subject to the consent of the utility company.
- 77 If it becomes clear after three months that no practical improvement is being achieved, the remedies suggested in the Code of Practice for Inspections are escalation of the improvement plan, involvement of more senior managers, and civil and/or criminal remedies. Highway authorities have provided anecdotal evidence that the escalation process is not currently fit for purpose as a mechanism to improve poor performance. It has been reported that the escalation process is under-utilised due to the amount of time and the bureaucracy associated with implementation.

Defect inspection fees

- 78 If a utility company fails an inspection, it must repair the defective reinstatement. Authorities can then charge a fee for a follow-up inspection to inspect the repair and check it has been carried out to the required standard. As with fees for the initial inspections, there is currently a complex calculation for the follow-up inspections and for any joint inspections that might be carried out by the authority and the utility company.
- 79 Section 72(2) of the 1991 Act provides that, where a statutory undertaker has failed to comply with its duties to reinstate, it shall bear the cost of:
- A joint inspection with the authority to determine the nature of the failure and what remedial works need to be undertaken,
 - An inspection by the authority of the remedial works in progress, and
 - An inspection by the authority when the remedial works have been completed.
- 80 These inspections are known as 'defect inspections'. A distinct fee is charged for each of the three defect inspections. These fees were agreed by the Highways and Utilities Committee (HAUC)¹³ in the late 1990s but are not set out in the Inspections Code of Practice. HAUC agreed at the time that the defect inspection fee should be double the value of the sample inspection fee and was set at £47.50 for each inspection of chargeable works carried out by the authority. If all three defect inspections are carried out the fee is £47.50 x 3 = £142.50.
- 81 The subject of defect inspections fees has been an issue for some time as it creates disputes and confusion.

¹³ <http://www.hauc-uk.org.uk/>

Proposed amendments to legislation

Inspection units

- 82 We propose to amend the 2002 Inspection Regulations to simplify the basis of calculating inspection units and to use Street Manager to automatically calculate inspection units based on a simpler definition that would be based on the dimensions of the reinstatement. This would improve accuracy and reduce administration costs and disputes. The dimensions of a reinstatement are already entered in Street Manager when the reinstatement is registered.
- 83 The precise formula by which an inspection unit would be calculated is that all works with an area equal to or under 7.6 (also known as 'x') m² would have 1 inspection unit assigned to them. For every 'x' m² over this area size, an additional inspection unit would be assigned. For example, 7.7 m² would be calculated as 2 inspection units.

The table below demonstrates the assignment of inspection units based on the new calculation.

Size of works area (up to and including m ²)	Number of Inspection Units assigned
7.6	1
15.2	2
22.8	3
30.4	4
38	5

- 84 The proposal would not be used to materially change the total quantity of units of inspection or the number of chargeable sample inspections that take place. We are recommending this formula after analysis of Street Manager and data provided by members of the HAUC Inspections Working Group as we believe this would be the most neutral in terms of impact. However, there may be some who are impacted, both positively and negatively, depending on the type and size of works. We have included a couple of questions on the possible modification of the methodology to allow a coefficient to potentially mitigate adverse impacts. The coefficient could be applied to permit type or works type. Further analysis of this can be found in the Impact Assessment and questions on which we would appreciate your views.
- 85 The methodology to calculate this figure 7.6 m² is based on Street Manager data from August to December 2020. We have taken the size of the works over these five months and extrapolated the data to calculate the sum of area over a twelve-month basis. We have received information from fourteen authorities on the number of historic inspection units they have on an annual basis in their respective areas. We have matched up the sum of area of works to the number of typical inspection units in these authorities. This has allowed us to calculate a figure of 7.6m² per inspection unit. We have added a question to the consultation to gauge whether it would be beneficial to move the annual calculation from financial year to a January – December period.

Performance based inspections

- 86 We propose to amend the 2002 Inspection Regulations to set up a new system of banded, performance-based inspections so that poor performers will be inspected more, and consequently pay more in inspection fees, than those who comply with the requirements for reinstatements. Additional guidance on the changes would be included in an updated Code of Practice for Inspections, for example, the tables and examples given below.
- 87 These amendments will provide an incentive for better performance, it should reduce the number of defective reinstatements and additional works to repair them, it will help authorities to target inspections and it will reward good performers who spend time and money on compliance.
- 88 Performance will be assessed on the basis of sample inspections failure rates and subject to both in-month and annual review. Data taken from Street Manager about inspection category and outcome will be used to calculate failure rates of undertakers within regions. These calculations will be used to determine the baseline chargeable allocation annually and, where performance indicates, in-month enhanced inspections.
- 89 The performance bands will operate on a point scoring system (annual) and traffic light system (in-month) as per the table below:

Failure rate (%)	Point Score	Traffic Light
0.00 – 4.99%	1	Green
5.00 – 9.99%	2	Amber
≥10.00%	3	Red

Each row on the table below indicates example possible scoring under the new sample allocation. Please note, this list is not exhaustive.

Table showing all the possible chargeable sample allocations

Category (A - C)	Category (A - C)	Category (A - C)	Annual Chargeable Sample Allocation
1	1	1	22.50%
1	2	1	25.00%
1	2	2	27.50%
1	2	3	30.00%
2	2	2	30.00%
2	2	3	32.50%
1	3	3	32.50%
2	3	3	35.00%
3	3	3	37.50%

Each column represents one of Category A, B or C.

The score represents the traffic light score as determined by the failure rates in street manager. Please see the table above for the calculation of the score.

- 90 The baseline chargeable allocation is a total of 22.5% across all three inspections categories. This could be achieved with defect failure rates of 4.99% or less at the end of the 12-month period across all categories.
- 91 The maximum chargeable allocation is a total of 37.5% across all three inspections categories, which would be attained should performance decline in all categories – 10% and above.
- 92 Chargeable allocations would continue to be split equally between each category. For example, if the allocation is 27.5%, each category will be inspected 9.16% of the total number of works in that category.
- 93 In addition to the annual chargeable allocation, we are also proposing in-month reviews of failure rates again reported by Street Manager. This is to allow authorities to manage poor performance throughout the year.
- 94 The traffic light system will be used monthly to determine whether promoters will need to enter banded enhanced inspections within the year. Should failure rates within a category score 10% or above, this will result in a red score as per the table above. The promoter will have a one-month grace period in which to turnaround performance. Should failure rates not return to Amber after this period, the promoter will enter banded enhanced inspections.
- 95 We are proposing that the increase is per inspections category. For example, should a promoter score red (failure rate of 10% or greater) in Category A, but score green in Category B and C, the promoter will only see enhanced inspections of Category A and not across Categories B and C.
- 96 Banded enhanced inspections are the additional chargeable rates for inspections. These rates will be based on the annual units of inspections calculation and over and above the annual rates calculated by the point scoring system.
- 97 The table below, shows the proposed banded scoring;

Month	% of enhanced chargeable inspections
1	zero (grace period)
2	10%
3	20%
4	30%
5	40%
6	50%
7	60%

- 98 These proposals mean that, using Street Manager, data can be used to view number of defective reinstatements and inspectors can visit poor performers and charge them more frequently than good performers who comply with standards. The proposed regime will target enforcement on worst performers. Guidance

developed in conjunction with HAUC England can be used to support the framework.

- 99 This proposal would enable highway authorities to carry out additional inspections where they are needed to ensure works are carried out in a safe and compliant way, and that high-quality reinstatement occurs after street works have been completed.
- 100 Utility companies would be able to reduce the number of chargeable sample inspections carried out through increased reinstatement compliance.
- 101 It would be important to take a representative sample from Street Manager to provide accurate performance data. It is therefore proposed that only sample inspections should be used to measure levels of non-compliance as there is a risk that routine inspections and other forms of inspections could skew the sample.
- 102 Street Manager would also provide utility companies with clear and accurate data about their performance, so they know to improve their performance to avoid an enhanced inspection regime, in addition to accessing their own data. Guidance would be updated to advise Highway Authorities to inform the utility company if they were to become subject to an increased proportion of chargeable sample inspections.
- 103 The table below shows an example extract of Street Manager data and proposed performance calculations to illustrate, in more detail, how the above proposals would work. The first table shows the total inspections and failure rates as per Street Manager data. The second table shows the monthly traffic light score and annual chargeable sample allocation score derived from the failure rates.

	Cat A (failure rate)	Cat B (failure rate)	Cat C (failure rate)	Cat A (no. of inspections)	Cat B (no. of inspections)	Cat C (no. of inspections)
Promoter A	0.00%	16.67%	0.00%	3	6	1
Promoter B	14.14%	9.67%	3.67%	297	269	245
Promoter C	0.00%	5.56%	0.00%	17	18	14
Promoter D	0.00%	13.33%	7.69%	18	30	26
Promoter E	0.00%	33.33%	0.00%	1	3	5
Promoter F	3.70%	5.11%	5.98%	1026	743	686

	Cat A	Cat B	Cat C	Total Points	Sample Inspections
Promoter A	Green	Red	Green	5	27.5%
Promoter B	Red	Amber	Green	6	30.0%
Promoter C	Green	Amber	Green	4	25.0%
Promoter D	Green	Red	Amber	6	30.0%
Promoter E	Green	Red	Green	5	27.5%
Promoter F	Green	Amber	Amber	5	27.5%

Single defect inspection fee

- 104 We propose to include in the Inspections Code of Practice advice that the three separate defect fees are consolidated into a single defect fee calculation. This will overcome the current issues and disputes, simplify the fee rate and note it in the guidance so it is clear what the fees should be.
- 105 After discussion with the Inspections Working Group, we are proposing that the single defect inspection fee should be set at £120. This payment would cover any and all defect inspections carried out on a reinstatement. This level is intended to ensure the authority recovers its costs. This proposed change would simplify the process of paying for the inspection of non-compliant reinstatements by only requiring a single payment, thereby reducing the administrative burden on highway authorities and utility companies. A fixed cost for the inspection of non-complaint reinstatements would encourage compliance from utility companies of works by providing a clear cost of inspections associated with failure. A single defect fee would reduce the need to rigidly adhere to the three stages of defect inspections. Instead, authorities could conduct inspections that reflect the circumstances and allow them to efficiently comply with their statutory duties.
- 106 We propose that this payment should become due once both the relevant highway authority and utility company have agreed that the reinstatement is non-compliant. The Code of Practice for Inspections provides that, where a utility fails to respond to a Defect Notification, they will be assumed to have accepted the reinstatement is non-compliant. Utilities would not be liable to pay the single defect fee for reinstatements where non-compliance is contested and could challenge an invoice where they feel they have been incorrectly charged.

Q10: Should we use the methodology of 7.6m² per an inspection unit as a simplified inspection unit calculation?

Yes?

No?

If you have responded 'no', please explain why.

Q11: If you have responded 'yes' to question 10:

Should we include a coefficient based on either;

A: Industry works type

Or

B: Permit type - Major, Standard, Minor, Immediate.

A?

B?

Q12: Should we move the annual units of inspection calculation from April to March to January to December?

Yes?

No?

If you have responded 'no', please explain why.

Q13: Should we introduce performance based inspections?

Yes?

No?

If you have responded 'no', please explain why.

Q14: If you responded 'yes' to question 13:

Should we go ahead with the specific proposals for performance based inspections set out from paragraph 86?

Yes?

No?

If you have responded 'no', please explain why.

Q15: If you have responded 'yes' to question 14:

Do you think performance should be reported either:

A: Quarterly

Or

B: Monthly

A?

B?

Q16: Should we remove the fixed ceiling of percentage sample allocations per category and allow Highways Authorities the flexibility to increase or decrease the percentage allocation per category, within the total sample allocation?

Yes?

No?

If you have responded 'no', please explain why.

Q17: Should we consolidate the defect fees into a single fee of £120?

Yes?

No?

If you have responded 'no', please explain why.

5. Other Proposals

107 This section sets out proposed amendments to other aspects of the legislation governing street and road works:

- The list of criteria that can be used to designate roads as traffic sensitive.
- How to ensure authorities received information about other activities linked to works, for example, traffic light heads on adjacent roads.
- The definition of major works
- Whether notices should be sent to utility companies informing them in advance that overrun charges will be invoiced under Section 74 of the 1991 Act

108 This section also sets out a proposal for including advice in statutory guidance about how the reasonable period should be calculated for overrun charges

The current situation

Traffic sensitive criteria

109 Regulation 16 of the 2007 Noticing regulations allows authorities to designate roads as traffic sensitive. Once they are designated, other restrictions could be applied in terms of access or working times to reduce impacts on congestion on those traffic sensitive roads.

110 Regulation 16 states that:

(1) Subject to paragraphs (3) and (5) [of Regulation 16], a street authority may only designate a street as traffic-sensitive under section 64 [of the 1991 Act] if one or more of the criteria set out in paragraph (2) are met.

(2) The criteria referred to in paragraph (1) are that the street:

(a) is one on which at any time the street authority estimate the traffic flow to be greater than 500 vehicles per hour per lane of carriageway, disregarding bus or cycle lanes;

(b) is a single carriageway two-way road, the carriageway of which is less than 6.5 metres wide, having a traffic flow in both directions of not less than 600 vehicles per hour;

(c) falls within an area covered by an order in respect of congestion charges made under either section 295 of the Greater London Authority Act 1999 or section 169 of the Transport Act 2000;

(d) is one on which more than 25% of the traffic flow in both directions consists of heavy commercial vehicles;

- (e) is one on which the traffic flow in both directions includes more than eight buses per hour;
 - (f) is designated by the local highway authority, as part of its winter maintenance programme, as one requiring the treatment of any part of it with salt or other chemicals, when low temperatures are expected, to prevent the formation of ice;
 - (g) is within 100 metres of a critical signalised junction or a critical gyratory or roundabout system;
 - (h) has a pedestrian traffic flow of at least 1300 people per hour, per metre width of footway; or
 - (i) is on a tourist route or within an area where international, national or significant major local events take place.
- 111 This list of criteria has not been reviewed since 2007. There are therefore some criteria that can still be used that now appear to be unsuitable, although there is only anecdotal evidence to support this contention. For example
- (f) if a road is designated by an authority as part of its winter maintenance programme. Is this an effective criterion to use to judge whether works will impact traffic or buses on a busy road? It does not specify that winter maintenance has to actually be carried out regularly on that road, just that it has to be part of its programme?
 - (i) covers whether a road is on a tourist route or within an area where major events take place. But this can be very seasonal or perhaps even one event a year? Is this enough reason to restrict works or working times?
 - (c) allows a traffic sensitivity designation if a street is within a congestion charge area. The example in London covers a total area. Yet there may be roads within the total area where traffic would not be adversely affected by the works?
- 112 It is also important to remember that traffic sensitivity was initially designed for use in the old system of notices, whereby utility companies could submit a notice to the authority to inform it that it planned to work in that area and the dates, and the authority had limited powers to challenge when the works took place or the working times. Permits schemes which now cover almost 100% of authority areas allow the authority much more control over when the works take place and conditions can be added to cover working times and days to reduce the impact on congestion, especially at peak times or, for example, when an event might be taking place attracting extra traffic to an area.

Additional information about works

- 113 The recent review by the Highways Authority and Utilities Committee (HAUC) of the Co-ordination Code of Practice¹⁴ highlighted an issue over how permits should deal with information about related activities or traffic light heads that are placed on adjacent roads to the one where the works are taking place. It is clear that the permit will cover the work itself, but it is unclear how permits should deal

¹⁴ <https://s3.eu-west-1.amazonaws.com/static.iaguk.org/downloads/Code-of-Practice-for-Co-ordination-HAUCEngland-Edition-2020.pdf>

with these issues and there is a need for greater consistency.

114 The version of the coordination code recently published by HAUC (England) for consultation¹⁵ includes the following section in Chapter 7:

7.3.2 WORKS WHERE IT IS RECOMMENDED TO BE DONE UNDER A PERMIT OR NOTICE

The activities below relate to those works by all promoters for which notification to the authority is strongly recommended to assist in the co-ordination of highway management by the collection of accurate data, thereby supporting the Network Management Duty of the authority. Given that, these are recommended permits/notices they are **not subject to a permit fee** and are described as follows:

- Use of temporary traffic control in an adjacent street to the street in which the works covered by [the permit] are taking place
- Traffic census surveys – because disclosure prior to a census can encourage a change in normal traffic flows
- Pole testing involving excavation
- Core holes – not exceeding 150 mm in diameter
- Road markings – that are not part of a larger set of works and do not reduce the width of the carriageway, as they do not involve breaking up of the highway.

115 There may also be other traffic management measures on adjacent roads that it would be helpful for the highway authority to know about.

116 For example, some authorities ask for completion of a separate traffic signal form to seek approval to put temporary traffic lights on the network. The nature of the form and the information requested can vary between authorities. It is not a legal requirement for works promoters to complete these forms, but the information could be helpful for the authorities.

Major work's definition

117 One of the criteria used to classify a work as 'major' is 'street works which would normally be planned or known about at least six months in advance of the date proposed for the works'. If the work is a 'major', applications for permits have to be submitted 12 weeks before they start and there is a higher permit fee.

118 We amended this definition in 2020 to remove one of the previous criteria which was 'works which have been identified in the annual operating programme of an undertaker' to deal with the issue of works, which may only last a few days in duration, being classified as major and attracting a higher permit fee simply because it, or the programme of works in an area, was included in an annual operating programme.

¹⁵ <https://s3.eu-west-1.amazonaws.com/static.jaguk.org/downloads/Code-of-Practice-for-Co-ordination-HAUCEngland-Edition-2020.pdf>

- 119 Since this amendment came into force on 1st July 2020, there has still been confusion and, it seems, that the amendment did not fully resolve the issues or fully deliver the intention behind our original policy. There is still confusion, debate and discussions around whether works were known about at least six months in advance, and the 2020 amendment has simply transferred these issues from whether works were included in an annual operating programme to how far in advance were the works known about.

Overrun charges

- 120 Highway authorities can charge utilities under Section 74 of the 1991 Act overrun charges of up to £10,000 per day for every day the works overrun the end date agreed on the permit. The authority will send an invoice to the utility company and it is optional whether they inform the utility in advance.
- 121 Highway authorities are not currently required to formally inform the Statutory Undertaker that the works are attracting Section 74 overrun charges. Undertakers are sometime unaware that, for example, equipment has been left at the site or lines have not been repainted and charges can mount and there can be ongoing congestion and disruption. It is in the interest of both the undertaker and the authorities that the works are completed and the site is clear as soon as possible.

Calculation of the Reasonable Period for Permits

- 122 As noted above, highway authorities can charge utilities under Section 74 of the 1991 Act overrun charges of up to £10,000 per day where:

- (a) the duration of the works exceeds such period as may be prescribed, and
- (b) the works are not completed within a reasonable period.

- 123 Regulation 7 of the 2009 Charging Regulations states that the “prescribed period” is two working days. Section 74(2) defines the “reasonable period” as:

such period as is agreed by the authority and the undertaker to be reasonable or, in default of such agreement, is determined by arbitration to be reasonable, for completion of the works in question. In default of such agreement, the authority’s view as to what is reasonable shall be acted upon pending the decision of the arbitrator.

- 124 Regulations 10 and 11 of the 2009 Charging Regulations provide further detail on how to estimate when the works could be completed and how the reasonable period should be calculated. These Regulations also include requirements for statutory undertakers to notify the authority of the likely duration of the works and any revised estimates. Setting out these details can help to avoid disputes and can ensure consistency across different authority areas.
- 125 However, Regulations 10 and 11 of the 2009 Charging Regulations do not apply “where an undertaker proposes to carry out street works in respect of which a

permit must be obtained from a Permit Authority” (Regulation 10(5) and 11(5)). In other words, the estimating provisions do not apply in those areas where there is a permit scheme in place, which is almost now every authority in England. The “reasonable period” is, therefore, to be determined in accordance with Section 74(2) of the 1991 Act (see paragraph 123 above).

- 126 Regulation 37(4) of the 2007 Permit Regulations makes amendments to Section 74 of the 1991 Act in so far as it relates to specified works in specified streets. It means that, as far as permits are concerned, the specification in a permit of a period as one during which specified works may be carried out in a specified street is not to be taken as an agreement between the authority and the undertaker as to what the reasonable period is. The reasonable period may, therefore, be different to the period of time specified in the permit.
- 127 There is no further guidance provided about how the reasonable period should be calculated. We understand that many authorities use the same method as that used previously for notices but it could be open to inconsistency and a lack of clarity for both authorities and statutory undertakers, including how communications on agreeing the reasonable period are recorded in Street Manager.

Proposed amendments to legislation

Traffic sensitive criteria

- 128 We propose amending the 2007 Noticing Regulations to ensure the traffic sensitivity designation is only used for the roads that carry the most traffic or where works could adversely affect traffic, including buses and freight deliveries, cyclists and pedestrians.
- 129 At present, only one of the criteria needs to apply in order for a road to be designated as traffic sensitive. One option is to keep the current list but require that two criteria need to apply. This would mean, for example, a tourist route would need to, in addition, carry more than eight buses an hour in both directions.
- 130 An alternative option would be to maintain the need for one criteria to apply but remove if a road (f) is designated by the authority as part of its winter maintenance programme; (i) is on a tourist route or within an area where major events take place; and (c) is covered by a congestion charge. In these cases, and any others such as peak times or when the school day ends or over Christmas, the permit could be used to control when the works took place and the working times.
- 131 We are also interested in views about the limits set on the other criteria and whether these are still valid. We are not proposing to consider any additional criteria since permits and conditions can be used instead, they give greater operational flexibility and they do not unreasonably restrict access for promoters to carry out works.

Additional information about works

- 132 We would like views on how to improve the provision of information to highway authorities about activities related to the works covered by a permit or equipment placed on adjacent roads. This could also include other information, for example, the content of traffic signal forms. The aim would be to improve consistency, clarify requirements, support the authority's ability to manage the network and reduce the current number of disputes.
- 133 We propose to amend the 2007 Permit Regulations to include a section within a permit application for additional information to be provided, with no additional fees applied. This section would need no assessment or approval by the authority and would simply be for information to be noted by the authority. The section would only be completed if there is relevant information to be provided about the list of items set out in the coordination code of practice, which could be expanded to include any additional types of information such as the location of traffic signals. It may be easier, in administration terms, to complete the information section at the time of the permit application but there may be some works where the information is not yet known, for example, for major works. Updates could, however, be provided at a later date with no charges or fees applied.
- 134 This would have the advantage of removing any need for different forms to be sent, it would improve consistency and provide clarity and it would provide information the authority would find helpful to manage its network.

Major work's definition

- 135 We propose to further amend the 2007 Noticing Regulations to deal with confusion around the amended definition of "major works" in regulation 3(1) and to remove the current sub-paragraph (a) below:

"major works" means:

- (a) [street works which would normally be planned or known about at least six months in advance of the date proposed for the works];
- (b) street works, other than immediate works, where:
 - (i) the street authority has indicated to an undertaker; or
 - (ii) an undertaker considers,

that an order under section 14 of the 1984 Act (temporary prohibition or restriction on roads) is required; or

- (c) street works, other than immediate works, the planned duration of which exceeds ten days;

- 136 This will mean that there are only two criteria relating to the definition, so the classification will only apply to works that require a Temporary Traffic Regulation Order or that have a planned duration of more than 10 days.

Overrun charges

- 137 We propose to amend the 2009 Overrun Regulations and the 2007 Noticing Regulations to add a requirement for the highway authority to notify the utility via Street Manager that an overrun charge is being applied. We could specify that the authority must notify the utility company by, for example, the end of day two of the overrun at the latest. This would be called an ‘intent to charge’ notice and would be sent in advance of the invoice. It would be mandatory for authorities to issue these notices.
- 138 This will have the advantage of alerting the utility that an overrun charge is being applied so it can check and clear the site or the works as soon as possible to avoid any additional daily charges and to reduce any congestion or adverse impacts of the overrunning works. It will also improve consistency, fairness and clarity for both authorities and utility companies.

Calculation of the Reasonable Period for Permits

- 139 We would like to amend the statutory guidance on permit schemes¹⁶ to encourage authorities to provide written confirmation to undertakers through Street Manager when they are granting permits that the authority agrees that the “reasonable period” under Section 74(1)(b) of the 1991 Act is the same as the period of time specified in the permit as the period during which specified works may be carried out in a specified street.
- 140 In other words, it would encourage authorities to “agree” for the purposes of Section 74(2) that the “reasonable period” was the same as the period of time specified in the permit as the period during which specified works may be carried out in a specified street. If the works promoter thought they are going to overrun, they would need to request a variation to the permit to avoid incurring an overrun charge.
- 141 This would not require any legislative amendments and would leave it up to authorities and undertakers to agree in practice. It would provide all parties with flexibility in the event that they did not want to agree that the reasonable period should be the same as the period during which specified works may be carried out in a specified street.

Q18: Should the criteria for designating roads as traffic sensitive be amended?

Yes?

No?

If you have responded 'no', please explain why.

¹⁶ <https://www.gov.uk/government/publications/street-works-the-2007-permit-scheme-regulations-as-amended-in-2015>

Q19: If you have responded 'yes' to Question 18:

A: Should the criteria for designating roads as traffic sensitive be amended so that at least two criteria need to apply?

or

B: Should the criteria covering winter maintenance routes, part of a congestion charge zone or on a tourist route be removed?

A?

B?

Why?

Q20: Should additional information be supplied by the works promoter to accompany the permit application covering, for example, traffic light heads on adjacent streets and other activities?

Yes?

No?

If you have responded 'no', please explain why.

Q21: Should the major works definition be amended to remove 'works which would normally be planned or known about at least six months in advance of the date proposed for the works'?

Yes?

No?

If you have responded 'no', please explain why.

Q22: Should it be a requirement for highway authorities to send utility companies an 'intent to charge' notice that an overrun charge under Section 74 of the 1991 Act is being applied in advance of them sending an invoice for the total charges?

Yes?

No?

If you have responded 'no', please explain why.

Q23: Should advice on the calculation of the reasonable period for permits be included in the permit scheme statutory guidance?

Yes?

No?

If you have responded 'no', please explain why.

6. Implementation

Implementation periods

- 142 A Statutory Instrument will be laid to implement the outcome of this consultation, following consideration of the responses. As part of this, we will need to add dates when the changes will come into force. These can be different for different requirements.
- 143 Changes will need to be made to Street Manager to build the functionality, for example, for flexi permits, and we will need to allow a period of time for any API (Advanced Programming Interface) integrators to update their systems before any legal requirements could come into force and certain information or fields become mandatory. Street Manager itself can be updated fairly quickly, and updates released to the user interface every two weeks. However, the API version is currently updated every 6 months and API integrators have a further 6 months to update their systems. There could though, perhaps and if needed, be a special, one-off version at a three-month interval to introduce the key changes that result from this consultation and deliver the benefits sooner.
- 144 If it is agreed that the proposals included in this consultation should be taken forward, the Statutory Instrument could be laid by autumn/winter 2021.
- 145 Some proposals could come into force 21 days later, so early 2022, for example:
- Amendment to the definition of major works
- 146 Some proposals do not need amendments to Street Manager, or the functionality already exists, so could come into force 90 days later, so spring 2022, for example:
- Amendments to the criteria for designating roads as traffic sensitive
 - 2 hour starts and stop notices at weekends and from highway authorities
 - Information only permits
- 147 Proposals around Section 58 notifications could be built within Street Manager in 2021 since the roadmap already includes building this functionality for use on a voluntary basis. It could therefore be mandatory to use Street Manager for Section 58 notifications by summer 2022, if what is built in 2021 is included in version 3 of the API in December 2021.
- 148 The Notice of Intent to invoice for an overrun charge could be included in version 3 of the API and implemented by summer 2022.
- 149 Other proposals will need to wait for the functionality to be built in Street Manager, agreement on DfT funding for this development, and then for the

changes to be implemented by API integrators. This is likely to mean these changes would be in Street Manager by late spring/summer 2022 and in API systems by the end of 2022 or possibly 2023, depending on when it is introduced into the API version. As noted above, however, we could consider a one-off update to bring these in sooner. These proposals include:

- Flexi permits
- Inspections

150 The various Codes of Practice mentioned in this consultation document would be updated alongside this implementation timeline, so during 2022.

Q24: Do you have any comments on the implementation periods for each proposal and when the regulations should come into force?

Yes?

No?

If you have responded 'yes', please note your comments here.

What will happen next

A summary of responses, including the next steps, will be published within three months of the consultation closing on www.dft.gov.uk.

If you have questions about this consultation please email Streetmanager@dft.gov.uk

Annex A: Impact assessment

- 151 We are publishing an Impact Assessment to accompany this consultation. In addition to the questions included in this consultation document, we would also be interested to hear your views about these questions that relate to the Impact Assessment.
- 152 It would be helpful if you respond to these questions and complete the table you can find on the consultation page: <https://www.gov.uk/search/policy-papers-and-consultations>

Annex B: Consultation principles

The consultation is being conducted in line with the Government's key consultation principles which are listed below. Further information is available at <https://www.gov.uk/government/publications/consultation-principles-guidance>

If you have any comments about the consultation process please contact:

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London SW1P 4DR
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