

REPORT ON CONSULTATION

The Traffic Management Act 2004: secondary legislation on Notices, Directions and Restrictions, Permit Schemes and Fixed Penalty Notices.

The New Roads and Street Works Act 1991: revision of regulations taken under section 74 powers (charges for unreasonably prolonged occupation of the highway).

The Code of Practice on Co-ordination

**Summary of responses
November 2005**

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1. INTRODUCTION

1.1 This document sets out the results and analysis of the consultation on detailed provisions under Parts 3 and 4 of the Traffic Management Act 2004 (“TMA”) (Permits, Notices and Fixed Penalty Notices) and the revision of s74 of the New Roads and Street Works Act 1991 (“NRSWA”) and the associated Code of Practice on Co-ordination, together with the decisions taken by government.

1.2 The consultation was launched by the Department for Transport on the 1st February 2005, the deadline for comments was the 26th April 2005.

1.3 A hard copy document was sent to 585 key stakeholders, including local highway authorities, utilities and non-government organisations. The framework for issues on which government particularly required responses was a series of 94 questions on the four policy areas on which regulations are proposed (Permits, Notices, Section 74 and Fixed Penalty Notices). This document was also placed on the departmental website at:

www.dft.gov.uk/stellent/groups/dft_about/documents/page/dft_consultation_page.hcsp

1.4 Four regional seminars were organised by the Department during the consultation period in Birmingham, Bristol, London and Huddersfield to which all highway authorities and utilities were invited. These events provided consultees with the opportunity to gain a better understanding of consultation issues before formalising their written response to the consultation.

1.5 We wish to thank everyone who responded to the consultation. In total 240 responses were received via post and email to this consultation.

English Authorities	120
Welsh Authorities	11
Authority Groups	5
Utilities	46
Utility Groups	7
Joint Authority and Utility Committees	7
Regulators	2
Other Government Departments	6
Fire and Rescue Services	8
Software Developers	2
Advertising	4
Others	22

1.6 To take the development of these policies further, during May and June the Department met with four working groups comprising members of the *Highway Authorities and Utilities Committee (“HAUC(UK)”)*, a body representing highway authorities and utility companies which advises central government on street works issues, to assist central government with the consideration of the consultation response.

1.7 The remainder of this document addresses the questions posed under the consultation, responses and decisions taken.

2. EXECUTIVE SUMMARY

2.1 The consultation was on detailed provisions applying to permits; notices, directions and restrictions; prolonged occupation of the highway (s74 NRSWA); fixed penalty notices; and an associated Code of Practice.

2.2 The regulations reflect the complexity of street works controls and the questions posed to consultees cover a level of detail that street works practitioners already encounter under the existing control regime. It is therefore necessary to consider the specific questions, responses and Government conclusions, recorded in the following sections, to fully appreciate the outcome of the consultation.

2.3 Following consultation, and review by HAUC(UK) Working Groups, the Government remains committed to pursuing these regulations and the associated Code of Practice. A summary of the key issues is provided below.

Permits

2.4 The consultation response revealed wide-ranging views on this new concept of statutory undertakers being required to apply to street authorities for a permit before they can undertake street works, with more pro-active involvement by street authorities, including the ability to impose permit conditions. Since this is a new concept, and given the range of views, the Government intends to take forward regulations which will allow a range of scenarios - permits applying to all roads, permits applying to the busier roads with continued noticing for other roads, and permits for the busier with perhaps some form of automatic permits for the other roads. Testing different scenarios with a limited number of authorities will allow the Department to draw conclusions about which arrangement is the most effective.

2.5 The consultation has led to a revision of works categorisation. This has implications for permit fees. The Permits Working Group is to be reconvened to review the fee structure and other matters relating to permit cost.

Notices, Directions and Restrictions

2.6 The revision of categories of work for noticing has led to the deletion of the "programmed" category. It is subsumed into the "major" category, and an implication of that is that works which formerly might have fallen into the programmed category, are subject to 3 months advance notice, rather than the 6 months proposed for programmed works.

2.7 A and B roads will not be automatically deemed Traffic Sensitive. But street authorities will be able to designate such roads as traffic sensitive, provided that they can justify doing so after consultation.

2.8 The "incursion" concept, meaning works which "incur" onto the carriageway, is no longer to be included. So off-carriageway works (ie "non-incursive" are now to be dealt with through duration periods instead.

2.9 Following major street or highway works, on any type of road, street authorities will be able to direct that no further works can be undertaken for a set period of time, which varies depending on the nature of the works and the type of road. Immediate

works (including emergency works, such as a gas leak) are an exception, and so are customer connections, 20 days after works completion.

SECTION 74 OF THE NEW ROADS AND STREET WORKS ACT 1991

2.10 Highway authorities can charge undertakers when highway works are unduly prolonged (the enabling power is s74 of the New Roads and Street Works Act 1991). The proposal to exclude the less busy (non traffic sensitive category 3 and 4 roads) from charges attracted significant comment. Representatives of both highway authorities and utility companies submitted alternative proposals for consideration. The s74 working group is to be reconvened to review the charging options.

FIXED PENALTY NOTICES

2.11 When undertakers do not comply with noticing requirements so that street authorities do not have relevant knowledge of works, or if they do so incorrectly, it impairs the street authority's ability to co-ordinate works and introduce any appropriate traffic management measures so that the impact on traffic is minimised. The proposed fixed penalties for certain noticing offences - £120 and a discounted figure of £80 - are confirmed following consultation. Fixed Penalty Notices are not to be employed for revenue maximisation, and the consultation revealed a concern that this principle may be breached, for example, of inappropriate contracting out arrangements are introduced. The Department will emphasise in the Fixed Penalty Notice Guidance that there should be no incentives for contractors to pursue trivial offences.

3. PERMITS

3.1 **Q1.** It is proposed that permit schemes would apply to ALL roads in a permit authority's area. In other words, it would not be possible to operate a permit scheme on some roads and a noticing system on others. Do consultees agree with this approach? If not, why not? Do consultees consider that local views should be taken into account when a highway authority is considering the extent and scope of a permit scheme?

3.1.1 **Response:** There were 186 replies. 127 were in favour of this proposal that permit schemes apply to all roads in a permit authority area (101 authorities and 12 utilities) whilst 59 (16 authorities and 36 utilities) expressed a preference to see a mixture of notices and permits. 64 respondents agreed that it was important to take into account local views when considering permit schemes.

3.1.2 There were suggestions that permit schemes should only be applied on category 0, 1 and 2 streets (43) whilst others recommended permits for all streets but with automatic permits carrying no fee on category 3 and 4 and non Traffic Sensitive (TS) streets (10). Several respondents felt that the additional resources required for permitting arrangements should relate to the importance of streets in a network (35). It was also felt that there was a need to establish a hierarchy for the roads covered by permit schemes which took into account the needs of rural areas as well as urban areas (13).

3.1.3 **Government decision:** The Government has listened to the differing viewpoints surrounding the proposed permit schemes. In order to be able to ensure the success of permit schemes in the long-term, the Government will initially develop regulations which allow for a range of options. These are: i) permits for all roads within a local authority area; ii) permits for just the busier roads and noticing for the lesser roads; iii) permits for all roads within a local authority area but automatic permits for the lesser roads. The Government will then review these regulations after two years of operation.

3.2 **Q2.** It is proposed that schemes should apply equally to undertakers' works and those of highway authorities (except in relation to permit fees - see below). Is this realistic? How can a permit authority ensure that its own highway authority works are not treated more favourably than those of undertakers?

3.2.1 **Response:** There were 172 replies. 169 supported these proposals (111 authorities and 43 utilities) whilst 3 disagreed (2 authorities and 1 utility).

3.2.2 Emphasis was placed by respondents on the need to ensure clear separation between the authority permit team and those staff responsible for works on the highway (74). It was suggested that highway authorities should measure their performance on highway works against Key Performance Indicators ("KPIs") and publish the results (57). Other suggestions on this issue were that highway authorities should provide an audit trail of inspections (44) and that government should apply fees/charges to highway works as well (10). In addition, it was recommended that government should establish an independent Traffic Manager (39) or an independent policing body or commissioner, such as is proposed for Scotland (27).

3.2.3 **Government decision:** The English legislation does not allow for the establishment of an independent commissioner. However, the Government is exploring

the development of a set of KPIs to ensure that a level playing field with the performance required of utility companies is established. These would embrace Notices, Section 74, Fixed Penalty Notices and Permits. Performance against these KPIs could be considered within the context of the criteria measuring Network Management Duty performance.

3.3 Q3. Do special arrangements need to be put in place where a single permit scheme is to cover more than one authority area (e.g. within London)?

3.3.1 Response: There were 157 replies. 76 (27 authorities and 31 utilities) took the view that special arrangements did need to be put in place whilst 81 disagreed (71 authorities and 7 utilities).

3.3.2 There was general resistance amongst local authorities to the idea of running a permit scheme which covers more than one authority area. It was felt that no authority should be allowed to operate a permit scheme on another authority's network unless under intervention powers (11). There were several comments pertaining to the processes for running a shared permit scheme: detailed arrangements would need to be included in local schemes (32); permit fees would need to be reduced if one authority was running a permit scheme on behalf of other authorities (23); and there would need to be a single point of submission for permit requests (18).

3.3.3 Government decision: The complexity of potential local arrangements is such that this will need to be considered on a case by case basis.

3.4 Q4. What do Local Authorities think of the proposed arrangements under which authorities would have to apply to operate permit schemes? What do they think should happen with reviewing and modifying Permit Schemes over time?

3.4.1 Response: There were 154 replies. 85 were in favour (69 authorities and 12 utilities) and 26 were against (18 authorities and 6 utilities).

3.4.2 Specific comments made included that the arrangements would need to be regularly reviewed (61); the Government should provide national guidelines (31) or develop a national scheme in due course (10); all interested parties should be consulted about permit schemes prior to introduction (28). In addition, several local authorities felt that they should be allowed to decide for themselves whether to operate a permit scheme (35). There were also questions about whether it was possible to opt out of permit scheme after implementing one (12).

3.4.3 Government decision: The Government will address the issues raised by providing further guidance in the draft Code of Practice and/ or regulations. The arrangements introduced will be reviewed after 2 years of operation.

3.5 Q5. Some authorities may wish to run permit schemes whilst others may not. Given that the notification regime and the permit application regimes would be so similar, do consultees foresee any problems in this?

3.5.1 Response: There were 165 replies. 75 (42 authorities and 27 utilities) predicted that there would be problems with the proposals with 86 disagreeing (66 authorities and 11 utilities).

3.5.2 The comments focused on the problems that might arise through some authorities running permit schemes and others running noticing systems: it might cause confusion for utilities (65); customers will pay in one area and not the next (20); and permits will lead to additional costs for customers (17).

3.5.3 **Government decision:** The Government will be monitoring the running of permit schemes and that will establish whether the simultaneous running of permit schemes and noticing systems in different parts of the country causes any difficulties.

3.6 **Q6. Are the proposed timescales (set out in section 5.4 of the draft code) for a works promoter to apply for a permit and the permit authority to respond to applications realistic? If not, what periods should be prescribed and why? Are the validity periods proposed workable?**

3.6.1 **Response:** There were 171 replies. 69 approved the proposed timescales (61 authorities and 1 utility). The authorities in favour stated that the longer periods gave them more time to consider the application and coordination issues. 98 disagreed with the proposals (46 authorities and 44 utilities).

3.6.2 Several respondents made suggestions concerning the proposed timescales including: the response time for variations should be 3 days rather than 1 day (46) and 6 months for programmed works too long (33). In addition, concern was expressed over standard durations and application timescales of 20 and 10 days (19); the response time (16); and the validity periods (16). It was also felt that the table was unclear (12).

3.6.3 **Government decision:** It has been agreed that, to improve simplicity and consistency, the timescales for permits will follow the revised timescales proposed for noticing.

3.7 **Q7. Are the proposed arrangements for applying for retrospective permits (section 5.4.6 of the draft code) sensible? If not, what arrangements should be put in place?**

3.7.1 **Response:** There were 170 replies. 115 were in favour of the proposal (99 authorities and 9 utilities) whilst 55 were opposed (13 authorities and 35 utilities).

3.7.2 Specific comments included: if retrospective permits are required there should be no fee for them (26); unrealistic timescale for giving a retrospective permit of 1 hour (22); retrospective permits should be required for emergency works only (16); and several respondents felt that there should not be a retrospective permit (15).

3.7.3 **Government decision:** The Government has decided that there should be retrospective permits, with either a limited fee or a standard fee, as a local authority will incur some expenditure in issuing a retrospective permit. The Permits Working Group will be asked to consider this issue.

3.8 **Q8. Should two works promoters proposing to carry out works on the same site or at the same time be able to apply for a joint permit? Should only one permit fee have to be paid in such cases? How would overrun charges work in that situation? Would there need to be a primary and a secondary promoter as with the existing scheme?**

3.8.1 **Response:** There were 171 replies. 119 were in favour of joint permits (71 authorities and 40 utilities), whilst 51 disagreed (42 authorities and 3 utilities).

3.8.2 The majority of respondents felt that there should be one lead promoter with overall responsibility and therefore only one fee should be levied (103). Other comments included that there should be two permits and fees with equal rights and responsibilities (28) and that this issue would need to be resolved through meetings (10).

3.8.3 **Government decision:** The Government has agreed that can be a single permit for collaborative works. The promoters will need to agree between them who will be submitting the permit application.

3.9 **Q9. Section 5.6 of the draft code sets out the information that will need to be submitted in support of each permit application. Are the proposals sensible and realistic? Is there other information that should be required in the case of certain, or all, works?**

3.9.1 In order to decide whether to attach any conditions to the grant of a permit, the permit authority will need to consider the information provided in the permit application. Section 5.6 of the draft code set out the proposed areas in which information needed to be supplied. These were: depth, area in polygons, location, techniques to be used for underground activities, traffic management and Traffic Regulation Orders, timing and duration.

3.9.2 **Response:** There were 175 replies. 116 agreed with the information requirements for permit applications (102 authorities and 5 utilities) whilst 54 did not agree with the requirements (39 utilities and 8 authorities).

3.9.3 In the main, utilities objected to the additional information that they were being asked to provide. In addition, there were several complaints that it would be costly to provide polygons (38) and that it would create problems and delays to works (15). Other comments made included a suggestion that utilities should be asked to provide a "Description of Works" (19); the wording should be mandatory rather than recommended (11) and that it should be a requirement to provide contact name and details (10). In addition, it was suggested that the level of information required should be relevant to the work type (12).

3.9.4 **Government decision:** It has been agreed that "depth" and "technique" will be mandatory fields for permits although these fields will not be mandatory under the noticing system. As far as polygons are concerned, whilst the Government believes that they will be a useful tool for coordination it has been acknowledged that the introduction of polygons would be premature at this stage. Instead, an illustration of the works will need to be provided. A sub group has been convened to consider this in more detail.

3.10 **Q10. It is proposed that an activity promoter should identify the area that will be taken up by proposed works in an electronic manner using graphical information systems, by providing a "polygon" for the works. In recognition that not every promoter would be able to do this at present, it is proposed that it should be made a legal requirement to supply such locational information in a polygon format as from June 2008. In the meantime, promoters will be encouraged to provide the information in this form. Do consultees agree that**

activity promoters should be required to provide this information? If so, should they be given until 2008 to meet this requirement? If not, what date would be suitable?

3.10.1 Currently, an activity promoter only needs to provide the central point of a hole and the two points of a trench. However, the consultation proposed that by June 2008 it would be compulsory to provide the area of works in the form of a polygon. This would include the space occupied by the excavation, the signing and guarding and any plant, equipment or materials adjacent to the works site. Polygons will provide grid references for each point on the polygon. The purpose of introducing polygons will be to enable authorities to have a clearer sense of the road space being occupied by the works.

3.10.2 **Response:** There were 175 replies. 120 in agreement with the proposals (103 authorities and 7 utilities) whilst 55 were opposed (38 utilities and 10 authorities).

3.10.3 Authorities perceived this as a useful tool for assessing the impact of works. However, several respondents expressed concern that polygons would not be cost effective in terms of reducing disruption (40) or sufficiently accurate due to the weakness in the positional accuracy of OS mapping (18). In addition respondents suggested that polygons should either be introduced in 2008 (59) or 2007 (43).

3.10.4 **Government decision:** Whilst the Government believes that they will be a useful tool for coordination, we acknowledge that the introduction of polygons would be premature at this stage. A sub group of the Notices Working Group has been tasked with considering the proposal that an "illustration" of the works should be provided instead.

3.11 **Q11. Section 5.7.2. of the draft code addresses permit refusal. What are consultees' views on the desirability of allowing a permit to be refused on the basis of the information and requirements contained within the application, with the proviso that when the promoter comes back with something more acceptable the permit will be granted?**

3.11.1 **Response:** There were 166 replies. 130 agreed with the proposal (105 authorities and 15 utilities) whilst 36 disagreed with the proposals (30 utilities and 3 authorities).

3.11.2 It was suggested that the authority needs to be satisfied that all the information needs to be fully acceptable before a permit is issued (83) and that the authority needs to retain the right to refuse a permit (78). In addition, it was felt that the authority needs to consult with a promoter before charging in order to ensure that any possible issues over the invoice are discussed (37) and authorities should be charged for unreasonable requests for information (15).

3.11.3 **Government decision:** The authority will need to explain what information they judge to be missing when a permit is refused on the grounds of insufficient information.

3.12 **Q12. How do consultees consider that the proposals for variations and the application of s74 will work?**

3.12.1 A permit is valid for the period given in that permit. However, it is recognised that some activities will take longer than originally planned. Activities may not take place in the street without a permit and an extension of the duration will have to be applied for.

If activities take longer than allowed for under the terms of the permit, without good reason, they will be subject to s74 overrun charges if the Local Authority operates these powers.

3.12.2 **Response:** There were 169 replies. 56 in favour of the proposals (37 authorities and 12 utilities) compared to 93 who felt that the proposals would not work well (69 authorities and 18 utilities).

3.12.3 Several respondents stated that they wanted s74 as well as permit fees (86) and that s74 should apply to all streets and all works (76). Specific comments about the proposals for variation included that they needed to be simplified (34); challenges to the estimated duration of works must be the exception not the rule (23); the variation proposals were not acceptable (19); utilities were concerned that authorities will unfairly reduce durations when fixing permits and thus force variations and s74 charges (16); and engineering & safety considerations must be accepted as valid reasons for variations and extensions (11).

3.12.4 **Government decision:** In order for an undertaker to be able to legally work in the street, the permit has to be extended if the estimated duration granted in the original permit is to be exceeded. However it does not follow that reason for overrun has to be accepted by LA. The Government will be working with the s74 Working Group to develop the application of s74 within permit schemes further. It has been suggested that the permit extension granted for an 'unreasonable' extension should be called the 'overrun permit' making it clear that this could carry s74 charges.

3.13 **Q13. Do consultees agree that the fees proposed are reasonable? If not, at what level should they be set? Is the relative difference between the fees for different types of works on different road categories also sensible?**

3.13.1 **Response:** There were 170 replies. 33 stating that the fees were reasonable (28 authorities and 0 utilities) whilst 121 disagreed (66 authorities and 46 utilities).

3.13.2 Several respondents felt that it was difficult to assess the right level for the fees without knowing in more detail what a permit scheme may contain (55) although others argued that the proposed fees were either too high (44) or too low (40). The specific comments on the proposed fee levels were that they should be based on administrative costs (71); the fee differences were too complex and needed simplifying (17); the fees should be made proportionate to size of works (13); and permits should not be required for minor works (13). In addition, there was a feeling that fee levels should be reviewed after a period of between 6 months and 1 year (22).

3.13.3 **Government decision:** The Government will task the Permits Working Group with considering the fees structure in more detail in the context of the revised works categorisation (see question 41).

3.14 **Q14. Do consultees believe that the fee level proposed will enable a permit authority to cover its additional costs in operating a permit scheme?**

3.14.1 **Response:** There were 166 replies. 51 stating that the fee level proposed would cover the additional costs (19 authorities and 24 utilities) whilst 79 disagreed (60 authorities and 14 utilities).

3.14.2 Several respondents felt that the proposed fees would more than cover the authorities costs (43), particularly the cost of additional staff to run a permit scheme (16) although others argued that there was a need for s74 charges on all streets, permits and Fixed Penalty Notices to cover costs (14). It was suggested that there should be an audit of the scheme and the proposed fees (46).

3.14.3 **Government decision:** The Government will task the Permits Working Group with considering the fees structure in more detail in the context of the revised works categorisation (see question 41).

3.15 **Q15.** It is proposed that the same permit fees should apply in all parts of England. Do consultees agree that this is sensible, or should the regulations allow for regional variations (e.g. a different rate for London) or allow individual authorities to set their own fees (as long as the sums they receive in fees do not exceed the cost to them of operating the scheme)?

3.15.1 **Response:** There were 168 replies. 122 (70 authorities and 40 utilities) were in agreement with the proposal whilst 44 disagreed (37 authorities and 3 utilities).

3.15.2 Specific comments included: there should be a set of national fees (115); authorities should be allowed to set their own fees locally (30); there should be higher fees in London and other big cities (12); and need a banded approach nationally (10).

3.15.3 **Government Decision:** The Government will task the Permits Working Group with considering the fees structure in more detail either in establishing a national level or agreement to locally determined fees.

3.16 **Q16.** Whilst highway authorities will have to apply for a permit to carry out their works, it is not proposed that they should have to pay a fee for permits. Do consultees agree with this? Even if no fees are payable for permits, should there be some form of "shadow" payment arrangements so that the permit authority to which they have to apply for a permit is able to monitor the charges the highway authority would have been liable for if payments were required? Or would consultees prefer to see some form of performance monitoring, with Key Performance Indicators ("KPIs") and targets introduced to ensure parity between the different sectors?

3.16.1 **Response:** There were 170 replies. 114 in agreement with the proposals (93 authorities and 13 utilities) but 58 were against the proposal (20 authorities and 31 utilities).

3.16.2 Whilst the majority of respondents (99) agreed that KPIs for authorities were a good idea, others argued that there should be a form of shadow payment (61) or that actual fees should apply to all activity promoters (36) and that authorities should therefore have to pay both permit fees and s74 charges (44).

3.16.3 **Government decision:** Whilst no fees will be paid by authorities, the Government considers that in order to ensure that parity is maintained in the treatment of both authority and utility works KPIs will need to be developed to monitor the operation of permit schemes by authorities.

3.17 **Q17.** It is proposed that where a works promoter wishes to vary a permit that has already been issued, it should have to pay a flat fee of £25 for a new permit. However, where this means that the works' category will change (e.g. from minor to standard works) it should have to pay the difference between the fee for the original permit and the fee that would have applied to the new works category. Do consultees agree that a flat fee is sensible and that it should be set at £25? If not, what arrangements should be put in place? Do consultees agree that, where works change activity category, only charging for the difference between the fee for the permit actually required and that originally obtained is sufficient to encourage initial correct permit applications?

3.17.1 **Response:** There were 173 replies. 66 (36 authorities and 22 utilities) in favour of the proposal compared to 106 who were not (77 authorities and 22 utilities).

3.17.2 There was little real agreement about the level for permit variation. Several respondents argued that if the variation entailed moving to a higher category then both the original fee and the new fee for the original permit should be charged (67). Others felt that there should be a flat variation fee as well as the additional cost of moving to a higher category (42). As far as the level of fee is concerned, there were arguments that it should be based on costs (69); raised to £50 (21); and other argued that it should be higher than £25 (19).

3.17.3 **Government decision:** A £25 flat fee should be paid for a permit variation unless the works require a permit for a different category of works. In the latter case the difference in the fee between the first and second permit should be paid. However, fees need to be considered in more detail by the reconvened Permits Working Group in the context of the revised works categorisation (see question 41), and this can include confirmation of the appropriateness of the £25 flat fee.

3.18 **Q18.** It is also proposed that in areas where a permit scheme is in operation a permit authority will be able to carry an additional percentage of chargeable inspections of works. See section 5.12.5 of the draft code. This will enable a permit authority to inspect a representative sample of works to satisfy itself that these are being carried out in compliance with any permit that may have been issued. We would welcome consultees' views on this proposal. In particular, do consultees agree with the proposal that there should not be any rechargeable permit condition inspections on category 3 and 4 streets? Would consultees like to see a level of inspections of highway authority works?

3.18.1 **Response:** There were 172 replies. 57 in favour (48 authorities and 4 utilities) but 118 were not (67 authorities and 40 utilities).

3.18.2 Suggestions included that category 3 and 4 streets should be part of the inspection regime (103); include the same number of inspections of Highway works (72); a sample of Highway works should be included (32); increase inspection rate (26); no need to add further inspections to already heavily inspected highway works (10).

3.18.3 **Government decision:** The Government has decided to ask the Inspections Working Group to consider this in more detail. This could extend beyond a flat 40% of rechargeable inspections, allowing the group to consider whether it should be a higher proportion of inspections for utilities with a record for not complying with conditions and a lower proportion for those that are compliant. The Inspections Working Group will

also be asked to discuss whether there should be rechargeable permit condition inspections on category 3 and 4 streets.

3.19 **Q19.** Should permit authorities send out separate invoices for each permit or would it make more sense for them to invoice works promoters on a regular basis (say monthly) for all permits issued over that period? What are the implications for ensuring payments are received?

3.19.1 **Response:** There were 168 replies. Comments made included monthly invoices (93); agree locally (27); separate invoices per permit (21); and both individual and monthly permits should be given (21).

3.19.2 **Government decision:** The Government believes that it should be up to each authority to decide the frequency at which they send out invoices for permits.

3.20 **Q20.** If, say, monthly invoices are to be issued covering permits, how should the issue of disputed invoices be dealt with? If an undertaker wished to query the charges for 2 permits out of 50 covered in the invoice, and was unable to reach agreement with the authority over these, should they then pay the other 48, so that the 2 disputed amounts could be dealt with separately? If not, what alternative arrangements should be put in place to deal with contested invoices?

3.20.1 **Response:** There were 164 replies. 58 (38 authorities and 14 utilities) in favour of the suggestion whilst 39 were not (29 authorities and 7 utilities).

3.20.2 Suggestions made by the respondents included that: promoters should pay the non disputed parts of monthly invoices (61); some way of pre-agreeing invoices should be adopted following which the promoter should pay agreed fees invoice (44); the promoter should pay all of monthly invoices including disputed amounts and recover through dispute process (28); the authority should repay overpaid fees on next invoice (15); disputed fees to be agreed (15); and systems should allow for the issuing a credit note if an overpayment is made (12).

3.20.3 **Government decision:** The Government believes that it should be up to each authority to decide how to operate their invoicing system and payment arrangements are a matter for resolution between the authority and utility.

3.21 **Q21.** Should the invoicing arrangements be made statutory through the regulations or is this a matter best left to guidance and for each authority to make their own arrangements? There are proposals for the payment of s74 charges in Chapter 6 that might be replicated here. What do consultees think about that?

3.21.1 **Response:** There were 164 replies. 81 (52 authorities and 24 utilities) in favour of making the arrangements statutory whilst 78 disagreed (53 authorities and 19 utilities).

3.21.2 **Government decision:** The Government believes that invoicing should not be made statutory in regulations. It should be a matter for local agreement between the authorities and utilities.

3.22 **Q22.** Section 5.8 of the draft code sets out the types of conditions that a permit authority will be able to attach to individual permits. Do consultees agree

that each of these conditions should be able to be attached? If not, should the range of conditions allowed for be made wider or less wide? How far should the ability to attach conditions vary according to the nature and location of the proposed works?

3.22.1 **Response:** There were 167 replies. 104 (81 authorities and 20 utilities) in favour with 41 against (16 authorities and 16 utilities).

3.22.2 Other proposals included allow for “special conditions” to be attached where appropriate (57); consider each case on its merits and not be tied to a mandatory list (42); include a condition related to “Impact of activity on the network” (39); and only allow conditions that have direct impact on reducing disruption (36).

3.22.3 **Government decision:** The Code of Practice will allow ‘local conditions’ to be included where necessary. The Code of Practice will also stress the importance of the authority acting reasonably in setting conditions.

3.23 **Q23. The arrangements for giving FPNs in relation to permit schemes follow those for FPNs for NRSWA offences. In particular, do they agree that the FPN level for permit offences should be the same as for other offences (i.e. set at £120, with a reduced rate of £80 where the FPN is paid within 29 days of the notice being given)?**

3.23.1 **Response:** There were 169 replies. 152 agreeing with the proposals (101 authorities and 36 utilities) and 7 disagreed (3 authorities and 2 utilities).

3.23.2 Several respondents felt that as the levels were approved by Home Office that these should be followed (19). However, others argued that the level was too low (13) and that there should be a sliding scale of offences (11).

3.23.3 **Government decision:** It has been agreed that the FPN system for permits will follow that for the NRSWA offences.

3.24 **Q24. What information should be set out in a permit once it is issued (section 5.7 of the draft code)?**

3.24.1 **Response:** There were 165 replies. There were various suggestions made in response to this question. The majority felt that the permit should contain all of the information supplied by the undertaker as well as all of the conditions set by the authority (129). Other more specific comments included: the Start & End dates (27); any special conditions (26); the contact details (24); the location (22); the traffic management details (21); the agreed working hours (21); the work description (18); the Permit owner (17); and the Contractor (17). In addition it was stressed that these rules should be applied equally to authority works (26).

3.24.2 **Government decision:** The Permit Working Group will be asked to consider this in more detail. In addition, the Government will hold meetings with the software developers over IT issues.

3.25 **Q25. If permanent reinstatement cannot be completed on first pass, then it will be treated as a separate activity. However, the Working Group considered whether, where the activity promoter knows in advance that it cannot complete both parts of the activity in one go, it should be able to apply for a single permit**

in advance to cover both elements of the work. Do copyees agree that this should be allowed for?

3.25.1 The draft Code states that works involving reinstatement may not always be completed in one visit. On the first visit, it may only be possible to complete the works to interim reinstatement standard and on the second visit the work would then be completed to permanent reinstatement standard.

3.25.2 **Response:** There were 172 replies. 83 in favour of allowing a single permit for main works and permanent reinstatement (31 authorities and 43 utilities) whilst 87 were against it (80 authorities and 2 utilities).

3.25.3 Several respondents (70) wanted separate permits for phased works although others (10) felt that there should be two permits and two fees in order to encourage first time reinstatement.

3.25.4 **Government decision:** The Government feels that there should be scope in principle for a single permit with conditions to cover phased works. There should be a set maximum period between phases and only two phases would be allowed. If the utility cannot meet these conditions, then they should apply for separate permits. The Permit Working Group will discuss this in more detail.

3.26 **Q26. Section 5.11 of the draft code sets out the arrangements for resolving disputes. Do consultees agree with what is proposed?**

3.26.1 **Response:** There were 165 replies. 121 (80 authorities and 31 utilities) in favour of the proposals whilst 38 were not (26 authorities and 10 utilities).

3.26.2 Comments made included concern about the short timescales (38); the procedure should be binding and statutory (28); and a national adjudication service such as exists with Parking should be set up (14).

3.26.3 **Government decision:** The proposed arrangements will be retained. However this will be monitored by the Government.

3.27 **Q27. Do any arrangements need to be put in place to deal with the issue of potential legal liability where accidents or incidents occur in relation to works, which the permit authority has issued a permit for?**

3.27.1 **Response:** There were 165 replies. 86 in favour of the proposals (70 authorities and 9 utilities) and 45 were against (24 authorities and 18 utilities).

3.27.2 Comments received included responsibility should rest with promoters (62); there needs to be contingency arrangements to deal with liability (45); there needs to be a disclaimer for HA as standard on permit (25); and each case should be judged individually (23).

3.27.3 **Government decision:** This is an issue for authorities to seek their own legal advice.

3.28 **Q28. Permit regulations will need to disapply certain sections of NRSWA in areas where permit schemes are in operation. This is to ensure that undertakers are not subject to overlapping requirement under both NRSWA and**

permit regulations (e.g. to provide a notice under s55 of NRSWA and a permits application in relation to the same set of works). Do consultees agree with the list of sections of NRSWA set out in part 5.2 of the draft code that it is proposed should be disapplied in permit areas?

3.28.1 **Response:** There were 163 replies. 149 in favour of the list (96 authorities and 41 utilities) with only 10 against (7 authorities and 2 utilities).

3.28.2 Several respondents asked the Government to retain section 66 (63) of NRSWA.

3.28.3 **Government decision:** The Government will examine this list in more detail.

3.29 **Q29. The views of consultees would be welcome on the timescale for moving to including other activities on the highway within permit schemes, e.g. placing of skips etc.**

3.29.1 **Response:** There were 166 replies.

3.29.2 Comments made included: include as soon as possible (81); include them now (27); let existing proposals settle down and not rush it (24); include them in 2008 (20); and include them in 6 – 12 months (10).

3.29.3 **Government decision:** The Government will consider these timescales in more detail.

3.30 **Q30. How do consultees feel that such potential conflicts should be handled? Are they happy with what is proposed?**

3.30.1 The draft Code states that Permit authorities should take into account and, wherever possible, ensure that any conditions applied to a permit do not conflict with another requirement placed on an activity promoter under separate legislation. Section 5.9 of the draft Code sets out what permit authorities should do if these conflicts occur.

3.30.2 **Response:** There were 161 replies. 84 in favour of the proposals (50 authorities and 29 utilities) and 35 were opposed (28 authorities and 4 utilities).

3.30.3 Comments included that: undertakers may seek to confer liability onto authorities (31); responsibility should lie with the person applying for the permit (29); it is the highway authority's responsibility (23); no liability should be laid at the door of the highway authority (13); and too complex and required guidance (12).

3.30.4 **Government decision:** It is the responsibility of the authorities and utilities to seek their own legal advice.

3.31 **Q31. Do you have any comment on the analysis of the costs and benefits in the RIA? Please provide supporting evidence where possible.**

3.31.1 **Response:** There were 122 replies.

3.31.2 Several respondents proposed that there should be trials in order to evaluate the benefits, costs, risks and issues (47). Several respondents questioned the underlying assumptions of the amount of disruption caused by street works (38) and felt that permit schemes would increase costs far above the figures presented here (17). Others stated

that in order for permit schemes to be a success, they would require the application of s74 charging to all streets (11).

3.31.3 **Government decision:** The Government will take into consideration the comments made during the consultation and has asked for any further quantitative and qualitative information that the working group might supply.

3.32 **Q32. Do you consider that permit schemes will help to reduce the disruption caused by works in the highway?**

3.32.1 **Response:** There were 161 replies. 94 stating that permit schemes would help to reduce the disruption caused (87 authorities and 2 utilities) whilst 64 disagreed (15 authorities and 41 utilities).

3.32.2 Several respondents stated that utilities' street works account for only a small amount of congestion so there would be little impact on disruption (25). Others stated that for permit schemes to succeed, there was a need to apply s74 to all streets (21).

3.32.3 **Government decision:** The Government will take into consideration the comments made during the consultation.

3.33 **Q33. How can the reduction in disruption be measured?**

3.33.1 **Response:** There were 149 replies.

3.33.2 Methods of measuring disruption that were suggested by respondents include: KPIs that have been put in place to reduce disruption (26); journey time monitoring (15); year on year comparison of works durations (14); public satisfaction (13) and the impact on bus timetables and reliability (10). Others felt that it was important to agree these measures nationally. However it was also stated that there were no meaningful measures for measuring disruption (43); this should have been addressed before the legislation was drafted (15) and that there were too many variables to produce a meaningful measure (10).

3.33.3 **Government decision:** The Government will be considering this in more detail as part of the planned monitoring of the TMA implementation.

3.34 **Q34. Are there any additional costs that need to be considered?**

3.34.1 **Response:** There were 155 replies.

3.34.2 Additional costs that were suggested by respondents included: staff costs (92); IT costs (85); initial set up costs (51); uncertain (35); the fact that permit charges may be passed on to customers (35); legal costs (33); and financial support costs (28).

3.34.3 **Government decision:** The Government will take into consideration the comments made during the consultation and has asked for any further quantitative and qualitative information that the working group can supply.

3.35 **Q35. What additional costs do you envisage being incurred by your organisation as the result of implementing permit schemes? What have you included in these costs?**

3.35.1 **Response:** There were 163 replies.

3.35.2 The following additional costs were envisaged being incurred - additional administration costs (121); hardware and software changes (109); extra staff (92); site monitoring (60); initial set up costs, restructuring, etc.(51); direct costs of permits & FPNs (49); covering all eventualities in case of liability (33); discussions on applications (23); and more frequent meetings with promoters to agree jobs in advance (13).

3.35.3 **Government decision:** The Government will take into consideration the comments made during the consultation and has asked for any further quantitative and qualitative information that the working group might supply.

3.36 **Q36. Are there any other economic, environmental or social effects (good or bad), for example effects on health, or any issues such as race equality or rural effects, that are not currently covered in the RIA?**

3.36.1 **Response:** There were 139 replies.

3.36.2 Issues raised included: a social and environmental impact caused by inability to make s74 charges on lower category streets (61); a predicted deterioration in service to Utilities' customers (39); a concern that "non-incursive" areas (footways) will become obstructed (29); possible conflict with other legislation (e.g. environmental legislation, the Working Time Directive, the Disability Discrimination Act) (18); the impact of late and weekend working on staff and traffic and residents (18); increase in leakage levels (18); and stress due to the increased pressure and complexity (10).

3.36.3 **Government decision:** The Government will take into consideration the comments made during the consultation and has asked for any further quantitative and qualitative information that the working group might supply.

3.37 **Q37. Do you have any other comments on the RIA?**

3.37.1 **Response:** There were 111 replies.

3.37.2 The respondents produced a variety of responses to this question. Several respondents asked for more detail including clarification of costs and benefits (79); clarification of the advantages of a permit scheme (31). Several consultees commented on the consultation, suggesting that the RIA was inconclusive and incomplete (30) and that the permit regulations had not yet been produced (15). In order to ensure the success of permits it was suggested that the Department should run a pilot first before national implementation (53) and an independent body should be set up to oversee the scheme (34). Other comments included the need for an up-to-date and accurate GIS based NSG (26); that the permit scheme did not provide any added value over a properly run and monitored NRSWA scheme (15) and fire hydrant checking (13) and non excavatory works (13) should be exempt from a permit scheme.

3.37.3 **Government decision:** The Government will take into consideration the comments made during the consultation.

4. NOTICES, DIRECTIONS AND RESTRICTIONS

4.1 **Q38.** In creating the revised Co-ordination Code of Practice, the document has been split into two parts: a procedural document and an operational document. It is thought that by doing this the Code will be easier to use and to update in the future. What format do consultees think the final version of the code should follow? Should everything be included in a single volume, should the format in the consultation version be followed, or should the main body of the code form a single volume with all the appendices moved to a second volume? Are consultees happy with the simplified format of the Code, whatever number of volumes it comprises?

4.1.1 **Response:** There were 163 replies. 136 in favour of the proposals (98 authorities and 21 utilities) whilst 7 were against (4 authorities and 3 utilities).

4.1.2 As far as the number of volumes was concerned several respondents felt that there should be two volumes (93) whilst others argued that there should be either one volume (21) or three volumes (10). Others argued that the content is more important than the structure (38). It was also felt that the existing structure needs simplifying (34).

4.1.3 **Government decision:** The Government will take into consideration the comments made during the consultation in determining the format of the Code of Practice.

4.2 **Q39.** We would welcome consultees' views as to whether street authorities should indicate on the Additional Street Data entry in the National Street Gazetteer (see section 1.2 of volume 1 of the draft code) whether a particular road is one which may trigger a direction (under section 56A of NRSWA) to a works promoter that work to install new apparatus should not take place in that street?

4.2.1 **Response:** There were 174 replies. 143 indicating that they were in favour of the proposal (83 authorities and 44 utilities) whilst 26 were opposed (24 authorities and 1 utility).

4.2.2 Several comments felt that this should not be made mandatory (65) whilst others welcomed this suggestion (15). Other comments included that if it was made mandatory, authorities should not be precluded from using it on other streets (25) and others feared that it would increase their workload (14).

4.2.3 **Government decision:** This will not be a mandatory requirement.

4.3 **Q40.** Several changes have been made to the procedure for designating a street as traffic sensitive, including the list of those who must be consulted on proposed designations, and which streets can be designated (see section 1.5 of volume 1). We would welcome consultees' views on the proposed new arrangements.

4.3.1 The Code proposed that a street could be designated as traffic sensitive if one or more of a series of criteria applied, including issues such as traffic flow, usually HGVs and buses, and the presence of pedestrians. It also proposed that any A or B road could be designated as traffic sensitive.

4.3.4 **Response:** There were 172 replies. 122 in favour of the proposed changes (104 authorities and 7 utilities) and 50 were against (4 authorities and 38 utilities).

4.3.5 Several respondents stressed that there needs to be clear, acceptable and transparent criteria (75) but that the proposals were unclear and complex (32). There was a feeling that the existing rules should continue to be used (32) and the proposed consultation process was felt to be impractical or unnecessary (19). It was also stressed that authorities need to use this criteria sensibly (16) and it was important to make sure that local residents and businesses were consulted (15).

4.3.6 **Government decision:** The Government has decided not to include A and B roads in the automatic criteria for Traffic Sensitive classification. However, if a street authority believes that a particular A or B road should be designated as Traffic Sensitive, the decision is that it should be able to do so following consultation. Any such decision would be subject to a reasonableness test in the usual way.

4.4 **Q 41. Section 2.3 of volume 1 of the code sets out the proposed changes to the existing categories of activities in the street. It proposes dividing these into 5 categories: "programmed", "major", "standard", "minor" and "immediate". We would welcome consultees' comments on these proposed changes.**

4.4.1 **Response:** There were 174 replies. 124 in favour (93 authorities and 23 utilities) and 50 against (18 authorities and 23 utilities).

4.4.2 There were several concerns about the proposed noticing timescales, such as that the notice periods for Minor activities was insufficient (70); major works should have a maximum duration of 20 days (27) and that the timescales in general were too long (26). Other comments made were that there was no real perceived difference between Programmed and Major works (67) and that the definitions of Standard works (57) and Programmed works (27) were too vague.

4.4.3 **Government decision:** The Government has decided to simplify these categories by removing the proposed category of "programmed" works. There will therefore only be four categories: "major", "standard", "minor" and "immediate".

4.5 **Q42. Section 2.1.2 also defines what constitutes a "registerable activity" on which information should be kept on works registers, and which activities are excluded from this category. We would welcome views on whether changes should be made to the definition and exclusions and, if so, what they should be. In particular, under the proposals vehicles associated with works, which are parked for more than 10 minutes in anything other than a normal parking space, will count as registerable activities. What do consultees think of this proposal? Should the time limit be anything other than 10 minutes, for instance in line with proposals in the 2nd London Local Authorities Bill which defines 20 minutes?**

4.5.1 **Response:** There were 191 replies. 92 in favour of the new proposals (69 authorities and 14 utilities) whilst 99 were against them (46 authorities and 35 utilities).

4.5.2 There were several concerns about these proposals as respondents felt they were unworkable or unenforceable (94) or unclear or complex (69). The proposals included provisions for parked cars and several respondents stated that they felt that the vehicle should be registered if parked for longer than 10 minutes (81) whilst others argued for 20 minutes (31) or even 30 minutes plus (10) although there were concerns

that any time limit might encourage parking on the footway (19). Other comments made were that all works should be registered (40) and mobile works (38); surveying work (20); and fire hydrant testing (11) should be exempt.

4.5.3 **Government decision:** The Government has decided that the current definition based on whether or not an activity created an "incursion" was too complicated. Parked vehicles need to ensure that they abide by normal parking regulations and will therefore not be included in any definition for "registerable activities". The Government will seek further advice from the utilities and authorities about defining what is a "registerable activity".

4.6 **Q43. Section 2.1.2 contains suggestions on how street lighting works should be dealt with. Do consultees agree with this approach? If not, what alternative approach would they suggest?**

4.6.1 Legally, street lighting is deemed to be works for road purposes although the regional electricity company can carry out part of them. The draft Code stated that it was good practice for the regional electricity company ("REC") to provide the information by way of the usual notices as if these were in fact street works.

4.6.2 **Response:** There were 158 replies. 102 against the proposals (91 authorities and 7 utilities) compared to 53 in favour (27 authorities and 19 utilities).

4.6.3 **Government decision:** Since legislation determines the status of street lighting, the Government cannot readily alter the road works status of street lighting.

4.7 **Q44. Section 2.3.2 gives a definition of incursion, which is used elsewhere to define the activity category. Are consultees happy with this definition and if not what amendments would they wish to see made to it?**

4.7.1 "Incursion" is defined as those activities which involve any encroachment into the carriageway of the street.

4.7.2 **Response:** There were 178 replies. 103 in favour of these proposals (68 authorities and 27 utilities). 75 disagreed with the proposals (47 authorities and 18 utilities).

4.7.3 There seemed to be some confusion about the proposed definition of incursion with respondents asking for clarification such as if pedestrians and cyclists have to cross the road because of works, is this incursion? (75) and what is the definition of legitimate parking? (72). Several respondents felt that this proposal was unenforceable (24); and queried the need for this definition? (15).

4.7.4 **Government decision:** The Government has decided that instead of introducing a new "incursion" definition for use in categorisation of works, they should instead be categorised by appropriate duration periods.

4.8 **Q45. Section 2.5 requires that there should only be 2 phases to any activity. Do consultees agree with this? If not, why not?**

4.8.1 The draft Code states that works involving reinstatement may not always be completed in one visit. On the first visit, it may only be possible to complete the works

to interim reinstatement standard and on the second visit the work would then be completed to permanent reinstatement standard.

4.8.2 **Response:** There were 170 replies. 121 in favour of the proposal (97 authorities and 15 utilities) whilst 49 disagreed with the proposals (8 authorities and 32 utilities).

4.8.3 Several respondents stated that many works need more than two phases (42) and that it was important to cover any eventualities (15). Others felt that the Code was unclear (13).

4.8.4 **Government decision:** The Government accepts that there may be good reasons for it being necessary for there to be more than two phases. However, in principle no more than two phases is desirable and this best practice will be promoted through the Code of Practice.

4.9 **Q46. Section 2.5.2 includes a new way of dealing with remedial works. Do consultees agree with this?**

4.9.1 The draft Code stated that any such works are to be regarded as a separate activity and will require notices as an activity in their own right. These notices are to be cross-referenced to the Activity Reference for the original activity.

4.9.2 **Response:** There were 157 replies. 119 in favour of the proposal (95 authorities and 14 utilities) whilst 36 were against (9 authorities and 25 utilities).

4.9.3 Comments made included needs more thought (24); refer to Inspections Working Group (17); need single works reference for all phases (14); unclear (14); and treat separately (11).

4.9.4 **Government decision:** The Government has decided that remedial works should retain the same activity reference number as the original works. If the original notice cannot be found, then a new activity reference number should be created, categorised as “remedial works”.

4.10 **Q47. Section 3.3 of volume 1 of the code states that, as of June 2008, all works registers should make use of and be based on geographical information systems (GIS). We would welcome views as to whether the use of GIS should be imposed in this way, and, if so, whether the deadline should be later or earlier than 2008.**

4.10.1 The use of the GIS system will mean that the register should be capable of displaying the information it contains (or links to the information) against a digital map of its area.

4.10.2 **Response:** There were 176 replies. 159 in favour of the proposal (110 authorities and 32 utility companies) whilst 14 utility companies disagreed with this proposal.

4.10.3 Several respondents commented on the proposed date for implementation with it ranging from now (10) to 2007 (38) and 2008 (65). There were concerns about the quality of the data available on the GIS systems (23) and the cost of moving to GIS (19).

4.10.4 **Government decision:** It has been agreed that works registers will be based on GIS and the deadline for this will be 2008.

4.11 **Q48. Do consultees agree with the list of information set out in section 3.4 and Appendix E Table E2 of the code, which registers will be required to hold? If not, which additions or subtractions would they make?**

4.11.1 Section 3.4 of the draft Code sets out that each Register shall contain a range of geographical references, notices and procedural information.

4.11.2 **Response:** There were 159 replies. 136 (103 authorities and 19 utilities) in favour whilst 18 disagreed (2 authorities and 16 utilities).

4.11.3 Comments included concern over polygons (19); add Temporary Traffic Orders to table E2 (16); and add section 81 notices to table E2 (12).

4.11.4 **Government decision:** The Government has decided to introduce a phased approach for polygons. In the interim, undertakers will be required to send an “illustration” for major works through electronically.

4.12 **Q49. Section 3.5 Access to Registers – how do consultees feel about the instruction to place a subset at least of their register on their public website?**

4.12.1 **Response:** There were 167 replies. 160 in agreement with the proposals (104 authorities and 38 utilities) whilst 6 disagreed (4 authorities and 2 utilities).

4.12.2 Concerns were expressed during the post consultation discussions about placing personal details on the register.

4.12.3 **Government decision:** The Government will examine how to exclude personal details from the register.

4.13 **Q50. The Working Group considered how long data related to street works should be kept by both authorities and utilities. Section 3.6 of volume 1 of the draft code deals with this issue. The Department would welcome the views of consultees on the minimum period for which data should be kept, and what format it should be kept in (e.g. fully archiving of all the data or just the final closing data of a set of works). What factors need to be taken into account here?**

4.13.1 **Response:** There were 162 replies. 153 in favour of the proposal to keep the data for 21 years (98 authorities and 42 utilities) with only 6 against (4 authorities and 2 utilities).

4.13.2 **Government decision:** Authorities and utilities need to ensure that they consider and comply with their legal duties and obligations.

4.14 **Q51. Section 4.2.1 requires that all notices should be given in electronic format within the next 2 years. Can consultees comment on whether this is feasible for them?**

4.14.1 **Response:** There were 171 replies. 169 (108 authorities and 46 utilities) in favour of the proposal with only 1 utility against.

4.14.2 **Government decision:** It was agreed that this is feasible but there is a need to retain a paper fallback position in the event of technological failure.

4.15 **Q52.** The table at section 4.2.5 sets out the new noticing periods. These are in many cases considerably longer than the current requirements and will require works to be planned further in advance, and thereby allow street authorities more opportunity to coordinate the works in the pursuit of their network management duties. We would welcome comments on these, in particular as to whether any of the proposed periods are too long or too short, taking into account the competing requirements for better coordination and the expectation of the public for utility services.

4.15.1 **Response:** There were 178 replies. 114 in favour of the proposed new noticing periods (96 authorities and 5 utilities). 64 opposed the extended notice periods (43 utilities and 15 authorities).

4.15.2 There were several comments concerning the new category of "Programmed" works with respondents questioning both the ability of promoters to provide accurate data about their proposals up to 6 months in advance (15) and the benefits of providing information so far in advance (43). Instead it was felt that a 3 month advance notice period would prove much more manageable (17). Overall, it was felt that the revised periods were too onerous (27); unrealistic (52); and did not take into account funding issues on both sides (19). In addition, there were concerns expressed over the downgrading of Category 3 and 4 streets and footways (25).

4.15.3 **Government decision:** In discussion with the Notices Working Group, the Government has reviewed the noticing periods as a result of the comments made during the consultation. It has been decided to remove the category of "Programmed" works, there will not be a distinction between works on categories 0, 1, 2 and TS streets and those on categories 3 and 4 streets in terms of notice periods and the maximum notice period for "Major" works will be 3 months. This is illustrated below.

	Notice Period	
	S54	Ss55/57
Major	3 months	10 days
Standard	N/a	10 days
Minor	N/a	3 days
Immediate	N/a	2 hours after

4.16 **Q53.** Section 4.7 Collaborative works – can consultees give their views on the practicality and desirability of encouraging activity promoters to work together to reduce disruption?

4.16.1 **Response:** There were 169 replies. 157 in favour of this proposal (105 authorities and 40 utilities) whilst 11 disagreed with the proposals (5 authorities and 5 utilities).

4.16.2 The consultation responses suggested that collaborative works were often hard to manage and clear responsibilities were needed to be set down from the start (49) otherwise the detail of these works would make them difficult to manage (22). It was also felt that often the Health and Safety aspects make such collaborative working

unfeasible (12). Other respondents suggested that the proposals in the Code were impractical (55). It was also felt that it would be useful to include a flowchart illustrating the process for managing collaborative works

4.16.3 **Government decision:** The Government has agreed to add a flowchart illustrating the process for managing collaborative works.

4.17 **Q54. Section 4.8 sets out the proposed new rules applying to notice validity. We would welcome views on these.**

4.17.1 **Response:** There were 163 replies. 117 in favour of the approach (85 authorities and 24 utilities) compared with 44 against it. (21 authorities and 20 utilities).

4.17.2 Issues raised were that the proposals were overcomplicated (56); the feasibility of the approach (44); and there was a need for flexibility if delivery timescales were to be met (24).

4.17.3 **Government decision:** In discussion with the Notices Working Group, the Government has reviewed the noticing periods as a result of the comments made during the consultation. These are illustrated below.

	Notice Period		Validity Period	
	S54	Ss55/57	S54	Ss55/57
Major	3 months	10 days	10days	5 days
Standard	N/a	10 days	N/a	5 days
Minor	N/a	3 days	N/a	1 day
Immediate	N/a	2 hours after	N/a	N/a

4.18 **Q55. Sections 4.10 to 4.12 sets out the rules pertaining to an authority giving a direction as to the timing or location of utility works, including the timescale within which these directions must be issued. We would welcome views on this.**

4.18.1 **Response:** There were 166 replies. 150 in favour (105 authorities and 34 utilities) whilst 16 were against (10 utilities and 3 authorities).

4.18.2 It was suggested that the s56 and s56A notices should only apply to Programmed works at the advance notice stage (25). It was also argued that there was a need for local authorities to justify any such directions in terms of measurable reduction in disruption (25) and to take into account any overriding technical or customer related reasons for directions on timing and location to be nullified (16).

4.18.3 **Government decision:** The Government will expand the Code to include a reasonableness test at section 4.10.3.

4.19 **Q56. Sections 4.13 to 4.16 of the code set out the arrangements relating to an authority imposing restrictions on further works following substantial street or highway works (ss 58 and 58A). We would welcome comments in particular on the procedure for imposing restrictions, the proposed length of restrictions in different circumstances and those works which would be able to be carried out where a restriction is in place.**

4.19.1 **Response:** There were 171 replies. 127 in favour of the new provisions (101 authorities and 14 utilities) but 44 oppose the new provisions (10 authorities and 31 utilities).

4.19.2 Several respondents had concerns about the proposed timescales (41) and felt that they were excessive and would be difficult to control (46). In addition it was felt that the notice period for creating restrictions should be 3 months and not 6 months (14) and for category 3 and 4 streets the substantial works period should be extended to one year. Other comments were that overlays should be included in the definitions of substantial road works (32); there should be restrictions after major transport works (22); footways should be included and considered separately from carriageways (21); the wording should be changed from "utilities are strongly recommended" to "must respond" (18); the powers should only be used on major roads (18) and new works and maintenance works to services should be exempt (15).

4.19.3 **Government decision:** This is principally about safeguarding the public investment in roads and as such it will apply to all roads, with the durations as set out in the consultation document.

4.20 **Q57. With regard to section 4.16, could consultees comment on the appropriateness of the embargo period of 20 days for customer connections.**

4.20.1 **Response:** There were 167 replies. 71 supporting this proposal (60 authorities and 4 utilities) whilst 96 disagreed with the proposals (46 authorities and 42 utilities).

4.20.2 Several respondents questioned the benefits of the proposal (46) and why it was necessary to put these works off for one month (28).

4.20.3 **Government decision:** The 20 day embargo period will be retained as this gives residents a valuable respite period after the completion of substantial road works and street works.

4.21 **Q58. Section 4.18 deals with the information required on the new s70(3) registration notice. Would consultees please comment on this list, whether it is realistic, too short a list or too long.**

4.21.1 This notice is to provide information on completion of reinstatement.

4.21.2 **Response:** There were 170 replies. 104 in favour of the proposal (94 authorities) whilst 66 were against the proposal (11 authorities and 49 utilities).

4.21.3 Several respondents felt that the proposals were excessive and would be difficult to implement (52). Specific comments were that authorities preferred to have 3 months between interim and permanent as opposed to the current 6 months (45); there were concerns about the accuracy of the data (21); and respondents were uncertain of the value of having names of qualified operatives and supervisors (16).

4.21.4 **Government decision:** The Government has decided that "weather" and "depth" should be considered by the Records Working Group. The identity of the operative and supervisor will not be included as they are matters for the client. The authority and utility representatives have been asked to discuss the reinstatement details. The requirement for a polygon will be removed and replaced with the requirement for a grid reference and measurements for each opening.

4.22 Q59. Should it be mandatory for highway authorities serving a section 58 notice to also inform all frontagers affected giving customers the opportunity to request utility works before any resurfacing takes place? Should this also cover property owners, where these are different from the occupier?

4.22.1 Response: There were 174 replies. 143 (87 authorities and 42 utilities) in favour whilst 28 disagreed (25 authorities and 2 utilities).

4.22.2 Several respondents felt that the requirement to notify owners rather than occupiers would be too onerous, particularly in urban areas (46) and they were concerned about the cost of this (13). Respondents stressed that it should not be mandatory to inform frontagers (28).

4.22.3 Government decision: The Government has agreed that it should be mandatory for all occupiers, rather than owners, to be informed.

4.23 Q60. Section 4.22 sets out a proposed way of dealing with errors in notices. We would welcome views on the practicality of this.

4.23.1 Response: There were 169 replies. 138 in favour (87 authorities and 43 utilities) whilst 30 disagreed with the proposals (24 authorities and 3 utilities).

4.23.2 Respondents stated that it was necessary to clarify the procedures (22) for error correction and that it would be possible to use the FPN procedure (56). If an error correction notice was given it was important to create an audit trail (20).

4.23.3 Government decision: The Government will discuss this with the software developers. Error correction notices should not overwrite the existing information but should be identified within the original notice and should be associated with the collection of notices for any works.

4.24 Q61. Section 7 of the draft code sets out the arrangements for resolving disputes. Do consultees agree with what is proposed? In particular, that the arrangements should be a recommended approach rather than imposed by law?

4.24.1 Response: There were 167 replies. 139 agreeing with this proposal (96 authorities and 34 utilities) but 24 disagreed (13 authorities and 9 utilities).

4.24.2 Several respondents felt that a formal adjudication service should be established (28). Others stated that the procedure needs to be clear and binding on applicants (16) and should be subject to periodic review (17). In addition, respondents felt that it was not robust enough (15) and may be time consuming (13).

4.24.3 Government decision: The legislation does not allow for a formal process. The proposed arrangements will be retained. However, this will be monitored by the Government and may be reviewed in the future.

4.25 Q62. Following the submission and consideration of the AMTEC report to the Department and in line with other work being carried out by other Government Departments, it has been agreed that the transfer of electronic data should be made using the XML format. This is a universal computer language that enables different software systems to interpret the data in exactly the same

way. By using this format, developers of suitable software for street works purposes will be able to do this much more easily. In addition, users of the systems will be able to communicate their data to other interested bodies regardless of the software that these bodies may be using. We would welcome the views of consultees on the use of this format and any potential problems or issues that they may identify.

4.25.1 **Response:** There were 147 replies. 131 in favour (87 authorities and 36 utilities) and only 3 were against.

4.25.2 Several respondents felt that there was a need for the Government to carry out a cost/benefit analysis before implementation (29). It was also suggested that the Government should hold discussions with the software developers (20).

4.25.3 **Government decision:** The Government will hold meetings with the software developers to discuss this further.

4.26 **Q63.** Section 7 of Volume 2 of the code contains a new tool, an algorithm, to help street authorities, and, if desired, work promoters assess the disruption which individual works are likely to cause. It is envisaged that this will help both to take the possible or necessary action to reduce this disruption. Do consultees think that this tool is likely to be useful? If not, why not? Should some consideration also be given to the social and environmental impact of works?

4.26.1 **Response:** There were 173 replies. 112 in favour of using the algorithm tool (85 authorities and 17 utilities) whilst 61 disagreed (28 utilities and 29 authorities).

4.26.2 There were several concerns about the algorithm including: it is not comprehensive enough (47); it is too theoretical (38); it may cause problems (36); it needs to be fully tested and agreed by the industry (35) and put before a panel of independent experts (18); it is not valid or realistic (33); it is too complex (16); and it is not properly explained (13). Other respondents felt that the algorithm should include social and environmental factors (39) and it should not be mandatory (34).

4.26.3 **Government decision:** The Government has decided that the algorithm should not be mandatory but will be a useful tool for coordination.

4.27 **Q64.** What implications do the proposed changes to the Co-ordination code of practice have for the other NRSWA codes of practice?

4.27.1 **Response:** There were 153 replies. 146 felt that there were implications for the other Codes of Practice whilst only 3 thought otherwise.

4.27.2 The most commonly cited Code for review was the Inspections Code (123); Diversionary Works Code (37); Reinstatement Code (35); Safety Code (31); and all Codes (23).

4.27.3 **Government decision:** The Government will consider which Codes need to be reviewed.

4.28 **Q65.** As well as taking on board the changes which are proposed to the existing powers set out in the Street Works (Registers, Notices, Directions and Designations) Regulations 1992, the opportunity has been taken to change the

format of the earlier regulations to make them clearer and to consolidate the various amendments that have been made in the past. We would welcome any comments consultees may have on the draft 2005 regulations.

4.28.1 **Response:** There were 143 replies. 130 agreeing with the format and content of the draft regulations (91 authorities and 31 utilities), whilst only 7 disagreed.

4.28.2 **Government decision:** The Government will take into consideration the formal responses made.

4.29 **Q66. Do you have any comment on the analysis of the costs and benefits in the RIA? Please provide supporting evidence where possible.**

4.29.1 **Response:** There were 135 replies.

4.29.2 There were several comments on the cost/benefit analysis as respondents felt that it would be costly to implement (75); there were no sources of income for authorities and many more duties (59); it needed further study, which the Department ought to carry out (46); and the Department needed to take the conclusions of the Goodwin report seriously in developing the revised RIA (29).

4.29.3 **Government decision:** The Government will take into consideration the comments made during the consultation and has asked for any further quantitative and qualitative comments that the working group might wish to provide.

4.30 **Q67. Are there any additional costs that need to be considered?**

4.30.1 **Response:** There were 127 replies.

4.30.2 Costs identified included IT costs (71); administration costs (68); labour costs associated with night working etc. (57); set up costs (47); legal costs (25); and the cost pass through to utility customers (16).

4.30.3 **Government decision:** The Government will take into consideration the comments made during the consultation and has asked for any further quantitative and qualitative comments that the working group might wish to provide.

4.31 **Q68. Are there any other economic, environmental or social effects (good or bad), for example effects on health, or any issues such as race equality or rural effects, that are not currently covered in the RIA?**

4.31.1 **Response:** There were 133 replies.

4.31.2 Comments made included: all streets and road users should be given consideration (83); the issue of cost pass through (26); a reduction in the quality of service to utility customers (20); environmental damage caused by delays (18); safety (16); and out of hours working (16).

4.31.3 **Government decision:** The Government will take into consideration the comments made during the consultation and has asked for any further quantitative and qualitative comments that the working group might wish to provide.

4.32 **Q69. Do you have any other comments on the RIA?**

4.32.1 **Response:** There were 89 replies.

4.32.2 Comments made included utility works do not damage roads so this statement should be removed from the RIA (17); question the causes of disruption mentioned in the RIA (19); and the RIA was inadequate and incomplete (13).

4.32.3 **Government decision:** The Government will take into consideration the comments made during the consultation.

5. SECTION 74

5.1 **Q70.** Currently, charges for unduly prolonged occupation of the highway apply to all roads irrespective of the level of vehicular and pedestrian traffic. The proposed provisions are intended to focus resources on busier roads that carry significant volumes of traffic in order to minimise overall traffic disruption. Do consultees agree that targeting charges in this manner, by exempting category 3 and 4 non-traffic sensitive roads, will have the effect of minimising disruption to traffic? What adverse impacts, if any, do consultees foresee in confining charges to busier roads in this way? Will it undermine authorities' ability to manage their networks efficiently?

5.1.1 **Response:** There were 185 replies. 60 in favour of the proposals (6 authorities and 46 utilities) but 125 were against it (117 authorities).

5.1.2 The proposal not to apply s74 charges to categories 3 and 4 streets led to several comments being made by respondents. There were concerns that this would lead to the development of a two-tier road network (125); that there would be a negative impact on residents on categories 3 and 4 streets (25) and that sites on category 3 and 4 roads would not be cleared as quickly (14) as the attention of the utilities would be focused on the higher category roads (11). Associated with this, there were concerns that this proposal would conflict with the Network Management Duty Guidance (73); that pedestrians would be affected (19) and that there would be problems with enforcement and management (19).

5.1.3 **Government decision:** In light of the changes to the noticing proposals and the responses to the consultation, the Government will reconvene the s74 Working Group to consider this in more detail.

5.2 **Q71.** The proposed provisions increase the level of charges in busy streets. Do you think the level of charges is appropriate to encourage work to be completed as quickly as possible? If not, please outline whether you think the charges are too high or too low and what level of charges you think would provide the appropriate incentives.

5.2.1 **Response:** There were 164 replies. 61 (56 authorities and 2 utilities) which stated that the higher charges will encourage work to be completed as quickly as possible, whilst 60 were opposed to such higher charges (29 authorities and 28 authorities).

5.2.2 There were several comments made about the proposed levels of charges with respondent suggesting that charges should apply to all classes of street (46); the present level was enough of an incentive to complete the works on time (34); higher charges would lead to more disputes (39); and higher charges would result in lower income for authorities (12).

5.2.3 **Government decision:** In light of the responses to the consultation, the Government will reconvene the s74 Working Group to discuss this in detail.

5.3 **Q72.** The charge levels have been raised to reflect more closely the impact of various works on disruption. What are consultees' views on the justification for these increases?

5.3.1 **Response:** There were 161 replies. 76 in favour (52 authorities and 18 utilities) and 77 were against (43 authorities and 26 utilities).

5.3.2 Several respondents felt that the proposed changes were justified as the increased charges were targeted where they could be most effective (19). However, other comments made were that the increase was too high and not justified (28) and these increases should apply to all streets (25).

5.3.3 **Government decision:** In light of the responses to the consultation, the Government will reconvene the s74 Working Group to discuss this in detail.

5.4 **Q73.** The proposed provisions exempt from S74 charges works that do not incur into the roadway. Do consultees agree that work that has no impact on either pedestrian or vehicular traffic flows should be exempt from charges in this way. Please detail what impacts (if any) you think this measure will have on the manner in which work is undertaken.

5.4.1 **Response:** There were 176 replies. 55 in agreement with the proposals (4 authorities and 45 utilities) and 121 were against the proposals (111 authorities).

5.4.2 Several comments were expressed against the proposals as it was felt that s74 charges should apply to all parts of every street in the network (63) and the current proposals were said to be inconsistent with the guidance for the Network Management Duty (47). Respondents felt that if the proposals were to be adopted, there would be an impact on pedestrians and the elderly (60); people with disabilities (21) and businesses (11). It was also felt that footways and verges would become dumping grounds for signs, waste and surplus materials (27) and that there would be administrative issues (16). Others argued that charges should only be made when it could be proven that congestion actually occurred (17) and the utilities put forward the case that they should be self-regulating (24).

5.4.3 **Government decision:** In light of the responses to the consultation, and the decision to abandon the incursion concept, the Government will reconvene the s74 Working Group to discuss this in detail.

5.5 **Q74.** The proposed provisions seek to encourage weekend working in busy locations to minimise overall disruption. Do consultees agree with this proposal? If not, please outline the reasons why and any alternatives that you think would help to reduce disruption.

5.5.1 **Response:** There were 169 replies. 81 (55 authorities and 19 utilities) supporting the proposals whilst 70 (45 authorities and 20 utilities) were against the proposals.

5.5.2 Several comments made on this question including that the decision should be left to the discretion of the LA (103); in many areas the roads were just as busy at weekends as the rest of the week (29); increased weekend working would lead to an increased cost of inspections (20); and there would be an impact on residents (13).

5.5.3 **Government decision:** The Government has decided that s74 will only apply to working days.

5.6 **Q75. The proposed provisions reduce the prescribed period to two days from the current prescribed period of three days. Do consultees agree that this will help to reduce disruption?**

5.6.1 The prescribed period refers to a set number of days, determined by the Secretary of State in regulations, during which no overrun charges can be levied.

5.6.2 **Response:** There were 167 replies. 69 in favour of the proposal (67 authorities and 4 utilities) and 85 were against (31 authorities and 46 utilities).

5.6.3 Respondents suggested that we should reduce to one day (53); leave at three days (34); and reduce to 0 days or remove (15).

5.6.4 **Government decision:** In light of the responses to the consultation, the Government will reconvene the s74 Working Group to discuss this in detail.

5.7 **Q76. Do the proposed changes tackle any problems consultees see with the existing scheme? What other amendments would consultees suggest to improve the current operation of the regime?**

5.7.1 **Response:** There were 155 replies. 70 agreeing with the proposed changes (40 authorities and 25 utilities) whilst 56 disagreed (45 authorities and 9 utilities).

5.7.2 There was agreement that the changes would at least tackle some of the problems that consultees saw in the existing scheme and some respondents felt that the proposal would reduce disruption (11). However there were still some concerns about the proposals in terms of the removal of category 3 and 4 streets from the scheme (46). There were concerns that the new scheme removed all the benefits and was overcomplicated (19). Other comments were around concerns about duration and overruns (19); that this scheme was unfair on utilities as it did not apply to authorities as well (19) and there was concern about the removal of minor works from the scheme (10).

5.7.3 **Government decision:** In light of the responses to the consultation, the Government will reconvene the s74 Working Group to discuss this in detail.

5.8 **Q77. The working group considered whether works promoters should be required to state on the actual start date notice for each works the identity of the contractor carrying out the works. Also, whether they should be required to provide details on close of works notices of the identity of the qualified operative and supervisor in relation to each works which section 67 of NRSWA requires to be present? We would welcome views on the benefits this would bring and how the information will be utilised?**

5.8.1 **Response:** There were 165 replies. 120 in favour (93 authorities and 19 utilities) with 30 against (7 authorities and 20 utilities).

5.8.2 Several respondents felt that the works promoter should only identify the contractor (23) and that they should not identify these details (18). Indeed, several respondents did not see any benefit in this information (24).

5.8.3 **Government decision:** The Government has decided that whilst the name of the contractor should be included on the actual start date notice, the works promoter should not be required to identify the qualified operative and supervisor on the works closed/clear notices.

5.9 **Q78. Do you have any comment on the analysis of the costs and benefits in the RIA? Please provide supporting evidence where possible.**

5.9.1 **Response:** There were 105 replies.

5.9.2 Several respondents felt that s74 should apply to authority works (18). Other comments included no balance between costs and benefits (14); insufficient information regarding costs and benefits (13); the number of works are unlikely to change (11); and there were environmental concerns regarding cat 3 and 4 roads (11).

5.9.3 **Government decision:** The Government will take into consideration the comments made during the consultation and has asked for any further quantitative and qualitative comments that the working group might like to supply.

5.10 **Q79. Are there any additional costs that need to be considered?**

5.10.1 **Response:** There were 111 replies.

5.10.2 Additional costs raised by consultees included additional administration costs for authorities (25) and the cost of resolving disputes and dealing with complaints (14). In addition, it was stated that additional costs to the utilities would be passed on to customers (29).

5.10.3 **Government decision:** The Government will take into consideration the comments made during the consultation and has asked for any further quantitative and qualitative comments that the working group might like to supply.

5.11 **Q80. Are there any other economic, environmental or social effects (good or bad), for example effects on health, or any issues such as race equality or rural effects, that are not currently covered in the RIA?**

5.11.1 **Response:** There were 103 replies.

5.11.2 It was felt that there would be an environmental impact due to site clearance, leakage etc (19) and this policy would lead to an apparent division of the network into two tiers (18). In addition there would be an impact on pedestrians (15); the disabled (15); residents (14); and businesses (12). Utilities felt that they should be trusted to self regulate their activities (13).

5.11.3 **Government decision:** The Government will take into consideration the comments made during the consultation and has asked for any further quantitative and qualitative comments that the working group might like to supply.

5.12 **Q81. Do you have any other comments on the RIA?**

5.12.1 **Response:** There were 96 replies.

5.12.2 The main response under this question were related again to the authorities' concern about a loss of control over category 3 and 4 streets and footway works. Comments were made concerning the Network Management Duty (15). Several respondents also disagreed with the charges (15).

5.12.3 **Government decision:** The Government will take into consideration the comments made during the consultation.

6. FIXED PENALTY NOTICES

6.1 **Q82.** Chapter 4 of the Guidance sets out the proposed amounts recommended by the Home Office for the FPNs to be £120 (full amount) and £80 (discounted amount). Do consultees feel that these amounts are appropriate?

6.1.1 **Response:** There were 158 replies. 75 which agreed with the proposals (49 authorities and 22 utilities) and 81 disagreed (50 authorities and 23 utilities).

6.1.2 There were several comments concerning the proposed levels in that they were too high (12) or too low (22) and that there should be a sliding scale of penalties (22). Several respondents felt that there should not be a discounted amount (19). Others stated that the level should be subject to review (23) and that the Government should use these penalty levels as the Home Office (14) has approved them.

6.1.3 **Government decision:** The Government has decided to follow the Home Office recommendations but will review after 2 years.

6.2 **Q83.** Chapter 4 of the Guidance states that an FPN for an offence may not be given more than 91 calendar days after the time of commission of the offence, beginning with the day on which the offence is committed. This 91 day period was set to take account of the Magistrates' Court Act 1980 under which proceedings cannot be brought in a Magistrates' Court more than six months after an offence has been committed. If the FPN process were followed through but did not commence until after 91 days, then it would not be possible for the authority to pursue the undertaker in court if the undertaker fails to pay the penalty. In addition the 91 day period corresponds with the typical three month inspection cycle common amongst street authorities. Do consultees feel that this 91 day period for giving a fixed penalty notice is appropriate?

6.2.1 **Response:** There were 152 replies. 121 agreeing with the proposals (85 authorities and 32 utilities) with 21 disagreeing (4 authorities and 12 utilities).

6.2.2 Several respondents wanted this period to be reduced (29) although others wanted it extended as not all works fall into a 3 month inspection cycle (5). In addition, there were suggestions that the 91 day period should commence from the discovery of the offence (9).

6.2.3 **Government decision:** The Government will emphasise in the Guidance that these are the maximum periods and the authority is encouraged to serve the FPN as soon as is possible.

6.3 **Q84.** Sections 4(2) and 5(1) of new schedule 4B to the New Roads and Street Works Act 1991 sets the periods for making payment at full and discount levels at 29 and 15 days respectively. The Home Office has suggested that these periods be modified and has suggested deadlines of 29 days for discounted amounts and 36 days for full amounts to give larger organisations time to process the fixed penalty notices. Do consultees agree that the periods for making payment should be modified?

6.3.1 **Response:** There were 158 replies. 119 (76 authorities and 33 utilities) which agreed with the proposals with only 16 (6 authorities and 8 utilities) disagreeing.

6.3.2 Several respondents felt that the time periods should be extended (12) and that they felt it would only be potentially achievable if FPNs are given electronically (19). Other respondents stated that there should not be a discounted period (17).

6.3.3 **Government decision:** The Government has decided to modify the periods in the regulations as proposed in the consultation but will monitor these time periods as part of the proposed review.

6.4 **Q85. Section 9(c) of Schedule 4B to NRSWA allows the Secretary of State to 'prescribe the method or methods by which penalties may be paid'. The Government has decided not to activate this power. Within the fixed penalty notice form, a range of payment methods are provided for paying the fixed penalty notice and section 5.4.1 of the guidance states that ' Street authorities and undertakers are encouraged to discuss how payment is to be made in practice to ensure that the process works as smoothly as possible'. Should we be more specific in defining the options for payment?**

6.4.1 **Response:** There were 161 replies. 125 which disagreed with the proposals (75 authorities and 37 utilities) and 24 agreed (16 authorities and 7 utilities).

6.4.2 Several respondents felt that the arrangements should be as flexible as possible (52). Others stated that either local finance agreements will need to be made (22) or the methods of payment should be chosen by the works promoter (16).

6.4.3 **Government decision:** The Government has decided not to be more specific in defining the options for payment. The form will indicate the processes that are available.

6.5 **Q86. Chapter 5 of the Guidance provides for a range of methods that can be used to give the fixed penalty notice. Section 5.3.1 states that 'the use of electronic means for dealing with fixed penalty notices is encouraged so that they can be handled quickly and efficiently. However, it is recognised that not all undertakers, which includes licence holders under section 50 of NRSWA, may have access to such facilities. Therefore other means of giving the fixed penalty notice are accommodated'. Should we be more specific in prescribing the methods to be used?**

6.5.1 **Response:** There were 156 replies. 60 (37 authorities and 19 utilities) agreeing with the proposals whilst 87 (56 authorities and 23 utilities) disagreed.

6.5.2 Several respondents felt that an appropriate level of flexibility has been given (38). There was some discussion about electronic means with several respondents stating that any encouragement towards electronic means would be beneficial (29) and that they supported a move towards electronic notification in line with a sunrise period (18). Others stated that other methods should be accommodated (11).

6.5.3 **Government decision:** The Government has decided not to be more specific in prescribing the methods to be used. However, as part of the review after 2 years, it will consider whether there should be a sunrise clause making it mandatory to give FPNs electronically.

6.6 **Q87. The flowchart on representations in Chapter 6 has been prepared to assist both sides. Is this flowchart sufficiently clear?**

6.6.1 The flowchart sets out the fixed penalty notice system from the FPN being given, through any representation to the resolution of the FPN.

6.6.2 **Response:** There were 150 replies. 116 felt that the flowchart was sufficiently clear. Several comments were made about improvements which could be made to the flowchart.

6.6.3 **Government decision:** The Government will take into consideration the comments made.

6.7 **Q88. The Department for Transport is considering what, if any, functions might be subject to a Contracting Out Order and would welcome preliminary views on which functions would or would not be appropriate to be contracted out by street authorities. Any Contracting Out Order would be subject to further consultation and would also be subject to affirmative resolution by Parliament.**

6.7.1 **Response:** There were 129 replies. 64 (39 authorities and 22 utilities) which felt that FPNs should be subject to a Contracting Out Order and 41 disagreed (26 authorities and 12 utilities).

6.7.2 It was felt that the administration of FPNs could be contracted out easily (18) and contractors needed to have the power to issue FPNs on the behalf of the HA (21). However it was felt that it would be necessary to have safeguards in place to prevent overzealousness (22) and that discussions must always be referred back to the HA (21).

6.7.3 **Government decision:** The Government will consider which areas should be subject to a Contracting Out Order in more detail. However the Government will provide a steer in the Guidance that Contracting Out should not be done on the basis of the number of penalties pursued by the contractor, or methods that incentivise contractors to pursue trivial errors.

6.8 **Q89. The Street Works (Fixed Penalty) (England) Regulations 2005 sets out precisely how the Fixed Penalty Notice system will operate in practice. We would welcome any comments consultees may have on the draft 2005 regulations.**

6.8.1 **Response:** There were 128 replies.

6.8.2 The most frequently made comments were a statutory correction notice needs to be given (51); what constitutes an offence (32); there should be time limit on representations (31); are the offences continuous or one-off (27); once payment has been made, SU should lose right to make a representation (26); and there should be a sunrise clause for the use of electronic methods (12).

6.8.3 **Government decision:** The Government will take into consideration the comments made in reviewing the draft regulations.

6.9 **Q90. Do you have any comment on the analysis of the costs and benefits in the RIA? Please provide supporting evidence where possible.**

6.9.1 **Response:** There were 123 replies.

6.9.2 Comments made included the cost of additional inspections (29); the cost of IT systems (28); and the cost of issuing of FPNs and the collection of charges (26).

6.9.3 **Government decision:** The Government will take into consideration the comments made during the consultation and has asked for any further quantitative and qualitative comments that the working group might wish to supply.

6.10 **Q91. Are there any additional costs that need to be considered?**

6.10.1 **Response:** There were 118 replies.

6.10.2 Comments made included additional administrative costs (23); costs of FPNs (16); IT costs (12); and additional inspections (11).

6.10.3 **Government decision:** The Government will take into consideration the comments made during the consultation and has asked for any further quantitative and qualitative comments that the working group might wish to supply.

6.11 **Q92. Do you have any comment about the impact of this policy on (i) utility companies, (ii) section 50 licensees and (iii) street authorities?**

6.11.1 **Response:** There were 122 replies.

Utility companies

6.11.2 Comments made included: there will be a significant cost impact for utilities (7); utilities will have option of paying FPN instead of going to court (5); and there will be no additional obligations (5).

Section 50 licensees

6.11.3 Comments made included: HA should be the main lead and focus for ensuring that details are correct (6); managed until now without any real issues - FPNs should not apply (3); and costs will disproportionately impact on s50 licensees (2).

Street Authorities

6.11.4 Comments made included: this should provide more power to make undertakers provide correct notices (21); will assist authorities in carrying out their NMD (15); and there will be an unfunded additional resource for authorities in operating the system (11).

6.11.5 **Government decision:** The Government will take into consideration the comments made during the consultation.

6.12 **Q93.** Are there any other economic, environmental or social effects (good or bad), for example effects on health, or any issues such as race equality or rural effects, that are not currently covered in the RIA?

6.12.1 **Response:** There were 71 replies.

6.12.2 Comments made included less time wasted on legal matters (6); concerned about excluding categories 3 and 4 from S74 (4); increased stress (3); and reduction in service (3).

6.12.3 **Government decision:** The Government will take into consideration the comments made during the consultation.

6.13 **Q94.** Do you have any other comments on the RIA?

6.13.1 **Response:** There were 83 replies.

6.13.2 The most frequently made comments are essential for Network Management Duty (26); level playing field (16); should be decriminalised (15); adjudication service should be set up (12); minor errors i.e. spelling should not be subject to an FPN (11);

6.13.3 **Government decision:** The Government will take into consideration the comments made during the consultation.

7. FURTHER INFORMATION

Paper copies of this consultation report can be obtained from the address below.

Copies of the full responses, unless marked as confidential, are available by writing to the following address. You will have to pay an administrative charge to cover photocopying and postage costs.

Traffic Management Division
3/24 Great Minster House
76 Marsham Street
London
SW1P 4DR

Streetworks.Parking@dft.gsi.gov.uk

8. LIST OF RESPONDENTS

Anglian Water
Ashington Associates
Association for Geographic Information
Association of London Government (ALG)
Atkins Telecoms on behalf of Cable & Wireless UK
Balfour Beatty plc
Barnsley Metropolitan Borough Council
Berkshire Fire and Rescue Service
Berkshire Unitaries Senior Technical Officers' Partnership (BUSTOP)
Bexley Council
Birmingham City Council
Blackburn with Darwen Borough Council and the Highway's side of NWAUC
Blackwater 2 Ltd/ Wales & West Utilities
Borough of Telford and Wrekin
Bournemouth and West Hampshire Water
Bracknell Forest Borough Council
Bridgend County Borough Council
Bristol City Council
Bristol Water
BT
British Water
Buckinghamshire County Council
Bury Metropolitan Borough
Calderdale Council
Cambridge Water Company
Cardiff Council
Carmarthenshire County Council
Central London Street Works Group
Central Networks
Cheshire County Council
Chief Fire Officers' Association
City and County of Swansea
City of Bradford Metropolitan District Council
City of Sunderland Council
City of Wakefield Metropolitan District Council
Clear Channel UK
COLT Telecom
Coplestone Stores and Post Office
Cornwall County Council
Corporation of London
County Surveyors Society
Cumbria County Council
Darlington Borough Council
Dee Valley Water
Department for the Environment, Food and Rural Affairs (DEFRA)
Derby City Council
Derbyshire County Council
Devon County Council
Doncaster Metropolitan Borough Council
Dorset County Council
Dudley Metropolitan Borough Council

Durham County Council
EDF Energy
East Midlands Joint Utility Group (EMJUG)
East Riding
East Sussex County Council
ElectraLink Ltd
EMPreSS
Energy Networks Association
Enterprise PLC
Essex County Council
Flintshire Council
Freight Transport Association (FTA)
Fulcrum Connections
Future SGN Gas Distribution Network Management
Gateshead Council
Gloucestershire County Council
Greenwich Council
Hampshire County Council
Haringey Council
Harrow Council
Hartlepool Borough Council
Her Majesty's Courts Service
Herefordshire Council
Hertfordshire County Council
Highways Agency
House Builders Federation
Institute of Highways Incorporated Engineers
Institution of Highways & Transportation (IHT)
JCDecaux
Kent County Council
Kent Fire and Rescue Service
Kent Utilities and Highway Representatives Joint Working Group
Kirklees Metropolitan Council
Kingston Communications
Kingston upon Hull City Council
Knowsley Metropolitan Borough Council
Lancashire County Council
Leeds City Council
Leicester City Council
Leicestershire County Council
Leicestershire Fire and Rescue Service
Lincolnshire County Council
Lincolnshire Fire and Rescue
Liverpool City Council
Local Government Association (LGA)
London Borough of Barking and Dagenham
London Borough of Barnet
London Borough of Bromley
London Borough of Camden
London Borough of Croydon
London Borough of Ealing
London Borough of Enfield
London Borough of Hackney
London Borough of Hammersmith and Fulham

London Borough of Islington
London Borough of Lewisham
London Borough of Merton
London Borough of Newham
London Borough of Sutton
London Borough of Tower Hamlets
London Borough of Waltham Forest
London Borough of Wandsworth
London Buses
London Fire and Emergency Planning Authority
London HAUC
London Joint Utilities Group
Luton Borough Council
MCI
Maiden Outdoor Advertising
Manchester City Council
Metropolitan Borough of Wirral
Mid Kent Water
Middlesbrough Council
Milton Keynes Council
ntl
National Grid Transco (NGT)
National Joint Utilities Group (NJUG)
National Street Works Highways Group
Neath Port Talbot
Network Rail
Newcastle City Council
NEXUS
Norfolk County Council
North of England Regional HAUC (Highways Side)
North East Lincolnshire Council
North East London Street Works Group
North Lincolnshire Council
North Somerset Council
North Yorkshire County Council
Northamptonshire County Council
Northern Electric Distribution Limited
Northumberland County Council
Northumbrian Water and Essex & Suffolk Water
Nottingham City Council
Nottinghamshire County Council
O2
Ofgem
Ofwat
Office of the Deputy Prime Minister (ODPM)
Ordnance Survey
Outdoor Advertising Association
Oxfordshire County Council
Pembrokeshire County Council
Portsmouth Water
PowerSystems Divisions of Scottish Power
Powys County Council
RAC Foundation for Motoring
Redcar & Cleveland Borough Council

Rhondda Cynon Taf County Borough Council
Road Haulage Association Ltd
Rochdale Metropolitan Borough Council
Rotherham Borough Council
Royal Berkshire Fire and Rescue
Royal Borough of Kensington and Chelsea
Royal Borough of Kingston upon Thames
Royal Borough of Windsor and Maidenhead
Royal Mail
SBWWI
St Helens Council
Sandwell Metropolitan Borough Council
Scottish and Southern Energy plc
Sefton Council
Severn Trent Water
Sheffield City Council
Shropshire County Council
Skanska Networks UK
Somerset County Council
South East Highways Authorities
South East Highway Authorities and Utilities Committee (SEHAUC)
South East Joint Utilities Group (SEJUG)
South East Water
South London Street Works Group
South Tyneside Council
South West Joint Utilities Group (SWJUG)
Southampton City Council
Southbank Systems
Southend-on-Sea Borough Council
Southern Water
Staffordshire County Council
Stockport Metropolitan Borough Council
Suffolk County Council
Surrey County Council
Surrey Fire and Rescue Service
Swindon Borough Council
Symology Ltd
Tendring Hundred Water
Thames Water
Three Valleys Water
Torbay Council
Transport for London (TfL)
UK Roads Board
United Utilities
UK Competitive Telecoms Association (UKCTA)
Walsall Metropolitan Borough Council
Welsh Water
Warwickshire County Council
WaterVoice
WaterUK
Welsh Association of Technical Officers (WATO)
Welsh Joint Utilities Group (WJUG)
Welsh Local Government Association
Wessex Water Services Ltd

West Berkshire District Council
West Midlands Highway Authorities Group
West Midland Joint Utilities Group (WMJUG)
West Sussex County Council
Western Power Distribution (South Wales) plc
Western Power Distribution (South West) plc
Westminster City Council
Wigan Council
Wiltshire County Council
Worcestershire County Council
Vale of Glamorgan Council
Yorkshire Electricity Distribution Services Ltd
Yorkshire HAUC (YHAUC)
Yorkshire Water
Your Communications Limited