



Roads: maintenance, repairs and street works

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This note describes the framework in which local authorities and the Highways Agency in England and Wales maintain and repair the road network. It also sets out the powers of utility companies and others to undertake street works and the powers available to highway authorities to manage and mitigate those works. It does not deal with winter maintenance, which is covered separately in [SN2874](#).

Highway authorities have a legal duty to maintain the highway; there is extensive guidance on how they should do this. There are ongoing concerns about the general state of the road network, the backlog of repairs and the cost of bringing these defects up to standard. The Coalition Government has reformed local authority funding for road repairs and this has raised concerns in some areas about the sufficiency of the money available. The Government points to specific grants for dealing with potholes and the £10 billion announced in June 2013 to deal with the maintenance backlog. It also argues that it is up to local authorities to prioritise their spending.

Similarly, control of *how* third parties like utility companies carry out street works is the responsibility of the relevant highway authority. However, street works carried out by public utilities and cable companies are undertaken by virtue of a statutory right or a licence and do not need the prior consent of the highway authority. Local authorities have powers to prevent roads from being dug-up repeatedly; can impose fines for non-compliance; implement a 'permit scheme' for street works; specify which route street works should follow and decide what day of the week and at what times works can be carried out. There is debate about the sufficiency of these powers or whether authorities are using them in the most optimal way.

Information on other roads-related issues can be found on the [Roads Topical Page](#) of the Parliament website.

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1 Maintenance and repairs

1.1 Extent of the problem

Every year the Asphalt Industry Alliance (AIA) publishes its Annual Local Authority Road Maintenance (ALARM) survey, based on returns from approximately 75 per cent of all local authorities in England and Wales.¹ The 2014 survey found that as far as the maintenance backlog is concerned, the estimated amount of time required to catch up as reported by highways authorities and based on current budgets would be 12 years in England, outside London and in Wales, and 14 years in London. The survey also found that 18 per cent of all local authority roads in England outside London are in a poor structural condition, falling to 16 per cent in Wales and rising to 19 per cent in London. Finally, on filling potholes:

2013 saw a 31 per cent increase on the previous year over the number of potholes filled during the course of the year. This year there is a small reduction from the number reported last year, but the overall number remains high at over 2 million.

The average cost of filling a pothole has not changed dramatically and feedback from discussions with local authorities indicate that in some cases costs are being contained by economies of scale.

The total cost of filling potholes across England and Wales is estimated at £107 million, a reduction of around five per cent on the cost reported in 2013.²

On road resurfacing, the survey states that “the ideal frequency of road resurfacing is between 10 and 20 years”. Currently, the frequency on *principal* roads is 33 years in England

¹ response rates vary by region and between years, 75 per cent is a rough average taking into account all these factors

² AIA, [Annual Local Authority Road Maintenance \(ALARM\) survey 2014](#), April 2014, p10

outside London, 19 years in London and 42 years in Wales. For all roads taken together it is 68 years in England and Wales and 32 years in London.³

The strategic road network in England and Wales is managed by the Highways Agency (HA). Maintenance of the road network consumes a high proportion of the HA's spend – around a third of the budget in 2012-13. In the same year it completed 752 lane miles of carriageway resurfacing.⁴

1.2 Law, guidance and practice

Highway authorities have a legal duty to maintain the highway under section 41 of the [Highways Act 1980](#), as amended. Further, there are standards of repair that they must follow. For local highway authorities these are set out in *Well-maintained Highways: Code of Practice for Highway Maintenance Management*, published in July 2005 by the UK Roads Liaison Group (UKRLG) and updated regularly since then. It is not a statutory document but is published with the backing of central and local government.⁵ The standards for the Highways Agency are set out in the *Network Management Manual (NMM)*, particularly Part 3 (routine service) and Part 5 (winter maintenance), and the *Routine and Winter Maintenance Manual*, both updated in July 2009.⁶

Highway authorities are strongly encouraged to develop and publish Highway Asset Management Plans (HAMPs), which are considered “fundamental to demonstrating the value of highway maintenance in delivering the wider objectives of corporate strategy, transport policy and value for money”.⁷ A HAMP will include things like an asset register (or inventory); levels of service; long term maintenance strategies; identification of future funding requirements to maintain required level of service; and development of co-ordinated forward programmes for highway maintenance, operation and improvement.⁸

Section 9 of *Well-maintained Highways* sets out how highway authorities should assess defect risks, enables them to allocate priorities to those risks and establish a timetable for addressing them.⁹ It explains:

This Code defines defects in two categories, which correspond with those adopted in England by the Highways Agency (HA) in respect of motorways and trunk roads:

- Category 1 - those that require prompt attention because they represent an immediate or imminent hazard or because there is a risk of short-term structural deterioration.
- Category 2 - all other defects.

Category 1 defects should be corrected or made safe at the time of the inspection, if reasonably practicable. In this context, making safe may constitute displaying warning notices, coning off or fencing off to protect the public from the defect. If it is not possible to correct or make safe the defect at the time of inspection, which will

³ *ibid.*, p11

⁴ HA, *Annual Report and Accounts 2012-13*, HC 354, July 2013, pp17 & 30

⁵ UK Roads Liaison Group, *Well-maintained Highways: Code of Practice for Highway Maintenance Management*, July 2005

⁶ DfT, *Routine and Winter Maintenance Manual* (Version 5.10, Amend No. 3), July 2009; and: *Network Management Manual* (Issue 1, Amend No. 8), July 2009

⁷ *op cit.*, *Well-maintained Highways: Code of Practice for Highway Maintenance Management*, para 5.4.1

⁸ *ibid.*, para 5.5.4

⁹ *ibid.*, paras 9.5.5-7

generally be the case, repairs of a permanent or temporary nature should be carried out as soon as possible, and in any case within a period of 24 hours. Permanent repair should be carried out within 28 days. Some authorities have formally adopted a higher level response time of 2 hours for those Category 1 defects considered to pose a particularly high risk. Others, whilst not formally defining such a high risk category, have arrangements in place to deal with situations requiring a particularly urgent response as they arise.

Category 2 defects are those which, following a risk assessment, are deemed not to represent an immediate or imminent hazard or risk of short term structural deterioration. Such defects may have safety implications, although of a far lesser significance than Category 1 defects, but are more likely to have serviceability or sustainability implications. These defects are not required to be urgently rectified, and those for which repairs are required shall be undertaken within a planned programme of works, with the priority as determined by risk assessment. These priorities together with access requirements, other works on the road network, traffic levels, and the need to minimise traffic management, should be considered as part of the overall asset management strategy. The programmes of work for their rectification should be part of the HAMP.

Category 2 defects may be categorised according to priority, high (H) medium (M) and low (L). Authorities should adopt a range of local target response times for Category 2 defects and apply them in responding to various categories of defect, based on the risk probability and its likely impact. This should also take into account the likelihood of further deterioration before the next scheduled inspection, and where this is a high probability, the defect should either be dealt with as Category 1 or an intermediate special inspection programmed.¹⁰

Well-maintained Highways does not include a definition of potholes, either in terms of depth or lateral extent, but states that the degree of risk from a pothole depends not merely upon its depth, but also its surface area and location.

The April 2012 final report of the Highways Maintenance Efficiency Programme (HMEP), carried out on behalf of the DfT, made a number of key recommendations for improving road maintenance, under three broad principles:

Prevention is better than cure – intervening at the right time will reduce the amount of potholes forming and prevent bigger problems later.

Right first time – do it once and get it right, rather than face continuous bills. Guidance, knowledge and workmanship are the enablers to this.

Clarity for the public – local highway authorities need to communicate to the public what is being done and how it is being done.¹¹

The then Transport Minister, Norman Baker, urged “all parts of the highway maintenance sector, including councillors, chief executives, local highway practitioners, the utility sector and contractors to adopt the approaches set out in this Review, not only to make real cost savings but also to provide a first class quality service to highway users”.¹²

¹⁰ *ibid.*, paras 9.4.18-9.4.21

¹¹ HMEP for DfT, *Prevention and a better cure: potholes review*, April 2012, pvi

¹² *ibid.*, piii

1.3 Funding and costs

In 2012/13 English local authority net current expenditure¹³ on highways and roads maintenance (including structural and routine maintenance and winter service) totalled £1.5 billion.¹⁴

Local highway authorities are not provided with one source of funding for pothole repairs, or road maintenance in general. They are expected to fund such repairs through revenues available to them from: Government grants (including Formula Grant and, from 2013/14 the Business Rates Retention Scheme); council tax; and, fees and charges.¹⁵ In 2013/14, English local authorities have a spending power¹⁶ of £51.9 billion through which to provide services including road maintenance.¹⁷

As part of the Conservative-Liberal Democrat Coalition Government's localism agenda, it amalgamated many ring-fenced budgets into the single Formula Grant pot so that local authorities are free to spend money on their priorities, rather than being forced by central government to spend it in particular areas.¹⁸ As part of this general move, in 2011-12, the 26 separate transport funding streams to local authorities were amalgamated into four. The money which had been specifically allocated to road maintenance was rolled up into the Formula Grant, so it is now for local authorities to decide how much to spend on road maintenance.¹⁹

The Government also provides a capital grant called the Highways Maintenance Block grant. This will provide over £3 billion to local authorities between 2011-12 and 2014-15. The profile of this grant is £806m in 2011/12, £779m in 2012/13, £750m in 2013/14 and £707m in 2014/15.²⁰ In 2010/11 there was an additional grant to local authorities to tackle potholes, totalling £84 million;²¹ and a further £200 million in 2011/12.²² In the June 2013 spending round the Government committed a further £10 billion to tackle the roads maintenance backlog by 2020/21 – £6 billion of which would go to local authorities:

The Government will repair the national road network, investing over £4 billion by 2020-21 to enable the Highways Agency to repair and renew the national road network, including resurfacing around 21,000 lane miles – eighty per cent of the Strategic Road Network. This is the equivalent to resurfacing a two lane road from London to Nairobi.

¹³ **Current expenditure** is the cost of running local authority services within the financial year. This includes the costs of staffing, heating, lighting and cleaning, together with expenditure on goods and services consumed within the year. This expenditure is offset by income from sales, fees and charges and other (non-grant) income, which gives **net current expenditure**

¹⁴ CLG, *Local authority revenue expenditure and financing in England: 2012 to 2013 final outturn*, November 2013 [RO2 – highways and transport services]

¹⁵ for more information see HC Library note [SN6517](#)

¹⁶ The sum of council tax; formula grant; non ring-fenced specific grants; and NHS funding for spend on social care that also benefits health

¹⁷ CLG, *Local Government Finance Settlement 2013/14*

¹⁸ [HC Deb 15 December 2010, c814W](#); It is also encouraging local authorities to manage their budgets more independently of central government and to look at other avenues to raise money for local investment, particularly for transport projects and schemes. Possible options include the Regional Growth Fund, Tax Increment Financing, PFI and the Green Investment Bank: further details on each of these in section 2.3 of HC Library note [SN5735](#)

¹⁹ [HC Deb 22 November 2010, cc33-34W](#)

²⁰ [HC Deb 21 May 2012, c391W](#)

²¹ *ibid.*

²² [HC Deb 5 May 2011, c769](#); the figures by local authority are available on the [DfT archive website](#)

The Government will also support local authorities to repair the local road network, investing nearly £6 billion over the next Parliament to tackle the significant maintenance backlog that exists today. This is the equivalent of 19 million potholes a year up to 2020-21. Together with the national maintenance funding, this investment in repairing the road network will sustain over 11,000 jobs through every year of the next Parliament.²³

In Budget 2014 the Chancellor announced a further £200 million ‘challenge fund’ for pothole repairs in 2014/15 to supplement the £183.5 million the Government made available to help repair local roads damaged by severe weather.²⁴ The Government stated that this, taken together with previously announced allocations brings “total government investment allocated to road maintenance to more than £1 billion in 2013 to 2014”.²⁵

There is an ongoing debate as to whether the funding provided to local highway authorities for road maintenance and pothole repairs is adequate. The 2012 ALARM survey stated:

A look back over the years to 2000 illustrates a fairly consistent picture of significant funding shortfall to the tune of around £1 billion a year, or thereabouts. This year the total projected shortfall across England and Wales amounts to just under £800 million, less than it has ever been, so a move in the right direction. However, it still equates to each local authority highways department being short of £5.3 million over the last year of the funds needed to keep their roads in reasonable condition.

It is decades of such underfunding that has led to the focus on reactive maintenance – a patch and mend approach – rather than on planned preventative maintenance. Three successive harsh winters have proven the point that allowing roads to deteriorate while the sun shines might be a short term solution to cash flow but in terms of value for money it gives the worst return. Planned preventative maintenance – resurfacing worn roads before they get to the state in which potholes start to appear – is at least 20 times less expensive than patching and mending. And a new surface will, at worst, last 10 times longer than a filled pothole.²⁶

There are other associated costs, such as compensation. The 2014 ALARM survey found that in 2013/14 local authorities across England and Wales paid out £31.6 million in road user compensation claims, this is lower than in previous years across all regions.²⁷

The April 2012 HMEP report (see above) recommended that the Government should commit to establishing budgets for highway maintenance for the full four years of Comprehensive Spending Review periods to provide ‘greater budget certainty’ for the highway sector, and local highway authorities should ensure their funding for highways maintenance is aligned to this time period.²⁸

Insofar as the national strategic road network is concerned, the Government allocated over £1.6 billion for Highways Agency Maintenance between 2011-12 and 2014-15. The profile of this grant is £416m in 2011/12, £464m in 2012/13, £391m in 2013/14 and £389m in

²³ HMG, *Investing in Britain's Future*, Cm 8669, June 2013, p17

²⁴ HMT, *Budget 2014*, HC 1104, March 2014, para 1.134 ; and DfT press notice, “[Councils receive share of roads repair funding](#)”, 20 March 2014 [contains breakdown of allocation by council]

²⁵ DfT press notice, “[Funding boost for roads hit by bad weather](#)”, 9 March 2014

²⁶ AIA, *Annual Local Authority Road Maintenance (ALARM) survey 2012*, March 2012, p2

²⁷ op cit., *Annual Local Authority Road Maintenance (ALARM) survey 2014*, p12

²⁸ op cit., *Prevention and a better cure: potholes review*, p17

2014/15.²⁹ The cost of maintaining the Highways Agency motorway and 'A road' network is £32,227 per lane mile.³⁰

2 Street works

Successive governments have sought to tackle the problem of private utility companies taking up the road to access cables, pipes, etc., causing delays, congestion and disruption. The primary legislation remains the *New Roads and Street Works Act 1991*, as amended by the *Traffic Management Act 2004* (TMA). Highway authorities have a duty to maintain their roads under Part IV of the *Highways Act 1980*, as amended; any roadworks that they undertake are subject to this legislation. Street works carried out by public utilities and cable companies are undertaken by virtue of a statutory right or a licence granted under the 1991 Act and do not need the prior consent of the street authority.³¹

The 1991 Act and associated regulations and codes of practice introduced new standards for the reinstatement of the road surface with utility companies being fully responsible for reinstatement following their street works.³² This was to end the previous confused divisions of responsibility between street authorities and utilities. Both interim and permanent reinstatements must conform to the statutory specification and undertakers executing road works must comply with prescribed material specifications and standards of workmanship when reinstating a road or footway and to guarantee the performance of the reinstatement for a minimum period of two years. Street authorities can carry out inspections of utilities' works, at their expense. All cases of defective reinstatement identified by the local authority may be rectified at the undertaker's expense. The undertaker must also, for each proven defect, bear the cost of the initial investigation and three further follow up inspections.

The 1991 Act also introduced better control over the timing and co-ordination of street works.³³ It established that local highway authorities have a general duty to coordinate street works, including their own road works, and that undertakers should co-operate with both the highway authorities and each other. Any construction company to whom a statutory authority has contracted out work must obtain a licence from the local highway authority. The highway authority may attach appropriate conditions to this licence in the interests of safety, to minimise inconvenience to those using the street, or to protect the structure of the street.

The highway authority cannot prevent a statutory undertaking from digging up the road but it can decide when the works should be done and it can prohibit the digging up of resurfaced roads, except for emergencies, within 12 months. Undertakers are required to give advance notice to the street authority of its planned works, other than minor works. The length of notice is prescribed in regulations and varies with circumstances. Under section 56 of the 1991 Act the highway authority has a power to give directions to undertakers in certain specified circumstances as to times when the works may and may not be carried out. The power does not apply to emergency works or to certain other urgent works for which no

²⁹ [HC Deb 21 May 2012, c391W](#); figures for the spend on the network (maintenance and capital) since 2001 are given in this PQ: [HC Deb 19 December 2012, c804W](#)

³⁰ HA, *Highways Agency Business Plan Performance Measures 2012-13 – Guidance Notes: Cost of maintaining the Highways Agency's motorway and A road network per lane mile* [accessed 17 April 2014]

³¹ cable companies became statutory undertakers as a result of the licences issued to them by the Office of Communications (OFCOM) under the *Telecommunications Act 1984*, as amended; this allows them to install and run their systems and gives them the authority to break open streets

³² DfT et al, *Specification for the Reinstatement of Openings in Highways* (2nd ed.), June 2002

³³ DfT, *Code of practice for the co-ordination of street works and works for road purposes and related matters* (3rd ed.), August 2009

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

In addition, every street work has to be carried out under a qualified supervisor and all street works have to be guarded and lit with properly installed traffic lights where appropriate.³⁴

2.1 Government policy

The Coalition Government has sought to reinforce the changes introduced in the TMA and to encourage local authorities to use the full extent of their powers to co-ordinate street works, reduce the levels of disruption caused and ensure that roads are reinstated in a timely manner to a high standard.³⁵ One way the Government has sought to do this is by urging local authorities to apply for permit schemes (see section 2.2, below) to control street works in their areas. They have also permitted some pilot lane rental schemes to proceed (see section 2.3, below) and increased the level of charges that may be imposed by highway authorities in England for unreasonably prolonged occupation of the highway (see section 2.4, below).

Work by the Local Government Association in late 2012 pointed to the urgency of addressing the problem of street works in an economic climate where the slightest nudge could push small businesses over the financial cliff. A November 2012 survey of 500 convenience stores in England found that:

Fifty seven per cent of convenience stores have experience streetworks over the last three years outside or in the vicinity of their business. Of convenience stores that had experienced streetworks, 72 per cent stated that these streetworks had a very or fairly negative impact on their business.

For convenience stores stating streetworks had a negative impact on their business, the majority (69 per cent) selected that streetworks had caused a reduction in sales.

The reduction in overall sales in an instance of streetworks equated to 10 per cent to 24 per cent for the greatest proportion of respondents (39 per cent).³⁶

The Labour Government's main achievement in this area between 1997 and 2010 was the passing and implementation of the TMA. When the 1991 Act was passed only a handful of utilities were permitted to dig up the road. However, by 2003-04 there were over 150 utilities able to conduct street works, causing significant growth in the levels of disruption caused by such works. Part 4 of the TMA amended the legislation to give highway authorities much greater powers to minimise unnecessary disruption caused by poorly planned works: authorities have more control over where and when works can and cannot take place; they can put in place longer embargoes to protect streets which are dug up again and again; and they have greater enforcement powers.³⁷ The TMA was implemented by three sets of Regulations which came into force in April and May 2008.³⁸

³⁴ DETR et al, *Safety at street works and road works: a code of practice*, January 2002

³⁵ [HC Deb 16 September 2010, cc1245-46W](#)

³⁶ LGA, *Holes in our pockets? How utility streetworks are damaging local growth*, December 2012, p8

³⁷ for more information, see section IV of HC Library Research Paper [RP 03/92](#)

³⁸ the *Traffic Management Permit Scheme (England) Regulations 2007 (SI 2007/3372)*; the *Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007 (SI 2007/1951)*; and the *Street Works (Fixed Penalty) (England) Regulations 2007 (SI 2007/1952)*

In December 2009 the Government published a summary and action plan from its October 2009 'street works summit'. This contained a range of ideas and proposals that the Government planned to consult on in 2010.³⁹ Before the 2010 General Election it published consultations on site safety, increasing charges for occupation of the highway and new inspection fees.⁴⁰

The Conservative Governments (1979-1997) established the framework governing the work of the public utilities under the 1991 Act. It replaced the *Public Utilities Street Works Act 1950*, and the bulk of its provisions came into effect on 1 January 1993. The Act implemented the main recommendations of the 1985 Horne Report on roads and the public utilities.⁴¹ Three codes of practice were prepared by the [Highway Authorities and Utilities Committee \(HAUC UK\)](#) and approved by the relevant Secretaries of State, to cover reinstatement, diversionary works, and coordination and cooperation. In April 2001 the DETR and HAUC UK published *Best practice in street works and highway works*, to complement the codes of practice.

2.2 Permit schemes

The TMA and the Permit Scheme Regulations made under it ([SI 2007/3372](#)) provide for a new system for local highway authorities to manage street works. This came into effect on 1 April 2008 and was accompanied by a new Code of Practice.⁴²

Permit schemes allow authorities to be more proactive in the management and control of activities taking place on the highway. They are, in effect, schemes to book occupation of the street for specified periods for a specified purpose. Unlike the arrangements under the 1991 Act, whereby the promoters are entitled to occupation of the street and must simply notify the highway authority of their intentions, permit schemes:

- include highway authorities own works;
- allow authorities to attach conditions to permits to impose constraints on the way that work is carried out and information is provided, allowing the authority to direct the timing of activities;
- allow authorities to vary the permit conditions (e.g. time extensions); and
- allow authorities to charge a fee to the statutory undertakers.⁴³

The Regulations were debated in the Commons on 15 October 2007 where they received general support from all parties. The Minister at the time, Rosie Winterton, set out the circumstances in which a local authority might want to operate a permit scheme:

Under a permit scheme, anyone wanting to carry out works in the street would need to obtain a permit before the relevant works began. A local authority may choose to attach conditions to a permit, such as specifying the days or times when work may or may not be done. For example, a local authority may say that it does not want work to

³⁹ DfT, [Street Works Summit 15 October 2009: Report and Action Plan](#), December 2009

⁴⁰ DfT, [Amendment to the Safety at Street Works and Road Works Code of Practice Consultation](#); [Consultation on the Amendment to the Charges for Unreasonably Prolonged Occupation of the Highways](#); and: [The Street Works \(Inspection Fees\) \(England\) Regulations 2010 Consultation](#) (all March 2010)

⁴¹ DoT, [Roads and Utilities: Review of the Public Utilities Street Works Act 1950](#), November 1985

⁴² DfT, [Traffic Management Act 2004: Code of Practice for Permits](#), March 2008

⁴³ [Explanatory Memorandum](#) to SI 2007/3372, paras 7.5-7.7

be carried out during the rush hour. Local authorities will also be able to make exceptions to permit requirements in certain circumstances, which will obviously enable emergency works to be done promptly. Utility companies will pay a fee for a permit that will cover the cost of the administration relating to their works [...]

It will not be mandatory for highway authorities to run permit schemes, and we do not expect that they will all necessarily hope to do so. When an authority chooses to operate a scheme, and the Secretary of State approves it, the authority will be able to do so. There will also be a review of the scheme to ensure that it is working appropriately. For each permit scheme we will expect the benefits—a reduction of delays and disruption—to outweigh the costs.⁴⁴

In January 2010 the Labour Government published new guidance for local authorities on how to apply for and operate permit schemes; this was updated in November 2010 by the Coalition Government.⁴⁵ In January 2012 the Government published a consultation on removing the need for the Secretary for State to approve local authority applications to run permit schemes.⁴⁶ This proposal was met with a generally favourable response and in January 2013 the Minister announced that the Government would legislate for this change as soon as legislative time could be found. This is unlikely to be before 2015.⁴⁷ Also in January 2013 the Government published new guidance to help local authorities develop and run permit schemes, clarifying the focus and scope for future schemes.⁴⁸

There are a number of permit schemes in England, including those across [Greater London](#); [Kent County Council](#); the [East of England](#) (Hertfordshire County Council; Luton Borough Council, Southend-on-Sea Borough Council and Bedford Borough Council); [St Helens Metropolitan Borough Council](#); [Yorkshire](#) (Barnsley Metropolitan Borough Council; Doncaster Metropolitan Borough Council; Rotherham Metropolitan Borough Council; Sheffield City Council; Kirklees Metropolitan Borough Council; and Leeds City Council); and [Greater Manchester](#).

London and Kent were the first two schemes to go live. In its first annual report on the operation of the permit scheme, Transport for London (TfL) stated that between January 2010 and January 2011 335,000 permits were granted and 44,000 permit applications were refused for varying reasons.⁴⁹ It reported that the scheme had resulted in:

- a significant increase in the number of recorded days of disruption saved through joint working and collaboration, saving some £2.7 million in congestion-related costs;
- a more than 200 per cent increase in the proportion of works that are formally recorded by highway authorities;
- a reduction in the total number of works undertaken by utilities of 17 per cent within permitting authorities as compared to only seven per cent in non-permitting authorities;

⁴⁴ Delegated Legislation Committee, 15 October 2007, c4

⁴⁵ DfT, *Traffic Management Act 2004: Permit Schemes Decision-making and development (2nd Edition)*, November 2010

⁴⁶ DfT, *A Consultation Paper ... on amending the Traffic Management Act 2004 - revising the permit scheme approval process*, January 2012

⁴⁷ DfT press notice, "Councils given greater freedom to clamp down on road works disruption", 23 January 2013

⁴⁸ DfT, *Traffic Management Act 2004 additional guidance for new permit schemes*, 15 January 2013

⁴⁹ TfL, *London Permit Scheme for Road Works and Street Works: First Year Evaluation Report*, 2011, p5

- better quality of information available to make considered coordination decisions; and
- benefits for average journey time and journey time reliability.⁵⁰

Kent also reported benefits in its first year (February 2010 to January 2011): a total number of days saved equivalent to a saving of 5 years and 7 months (equating to a saving of 4.46 per cent against total days occupation) and a reduction of 26 per cent in the total number of congestion and co-ordination complaints and street works enquiries.⁵¹

2.3 Lane rental schemes

Lane rental schemes allow councils to charge utility companies to dig up the busiest roads during peak times when road works cause the most disruption. Companies would be able to avoid the charges by carrying out works during quieter periods or, if appropriate, at night.

The scheme derives from section 255 of the *Transport Act 2000*, which introduced new section 74A into the 1991 Act.⁵² There was initial enthusiasm for the idea – the Labour Government consulted on Regulations to permit pilot lane rental schemes in 2001 and 2002 and pilot schemes eventually took place in Middlesbrough and Camden between March 2002 and March 2004.⁵³ Enthusiasm for the scheme waned after Halcrow reported that the pilot schemes had little effect on the working practices of the undertakers: there was little incentive to avoid the charges as the regulators agreed they could be passed on to the customer.⁵⁴ The Transport Select Committee was also unenthusiastic about lane rental in its 2003 report into local roads.⁵⁵

However, the idea has enjoyed a renaissance in recent years. The Labour Government announced in 2009 that it intended to consult on new regulations for lane rental to operate on ‘the most sensitive roads in the most congested urban areas’.⁵⁶ In August 2011 the Coalition Government published a consultation and draft guidance to councils outlining how lane rental schemes could be implemented.⁵⁷ Transport for London (TfL) published a separate consultation on applying for a lane rental scheme.⁵⁸ In January 2012 the Government announced that there would be three pilot schemes to trial the idea of lane rental, each of whom would be able to charge £2,500 a day to utility companies to dig up the busiest roads during peak times. It also published new guidance to local authorities wanting to put

⁵⁰ *ibid.*, p6

⁵¹ Kent CC, *Measuring the Success of the Kent Permit Scheme: Annual Report (February 2010 - January 2011)*, 2011, p35

⁵² *HL Deb 2 November 2000*, cc1131-41; it inserted

⁵³ DTLR, *Reducing disruption from utilities’ street works*, 14 August 2001, and *Lane rental pilot schemes consultation: summary of responses*, 22 February 2002; *Street works (charges for occupation of the highway) (England) regulations (SI 2001/4060)*; debated in Delegated Legislation Committee on **10 December 2001**; and: DTLR press notice, “[New schemes trialled to reduce road work disruption](#)”, 4 March 2002

⁵⁴ Halcrow Group for the DfT, *Monitoring of road rental projects: 1st annual report*, November 2003 (copy held in the House of Commons Library)

⁵⁵ Transport Committee, *Local roads and pathways* (fifth report of session 2002-03), HC 407, June 2003, para 112; in a September 2011 report, the Transport Committee reiterated its scepticism of lane rental schemes (see: Transport Committee, *Out of the jam: reducing congestion on our roads* (ninth report of session 2010-12), HC 872, September 2011, para 47)

⁵⁶ *op cit.*, *Street Works Summit 15 October 2009: Report and Action Plan*, p12

⁵⁷ DfT press notice, “[Bringing an end to rush hour road works disruption](#)”, 22 August 2011; and: DfT, *Lane rental schemes in England: consultation*, 22 August 2011

⁵⁸ TfL, *Proposed TfL Lane Rental Scheme*, 23 August 2011

schemes in place.⁵⁹ In February 2012 the Government published the regulations to permit the £2,500 daily charge.⁶⁰

The first pilot scheme began in June 2012 across Greater London; the scheme applies to 200 miles of roads in the capital run by TfL.⁶¹ A study of the scheme published in April 2014 found that

Following the introduction of the scheme, around 90 per cent of utility works and 99 per cent of works carried out by Transport for London (TfL) in the lane rental areas have avoided disrupting these busy roads at peak times.

All the main utility companies are also now signed up to the use of rapid drying materials, considerably reducing the amount of time required to reopen roads and helping to save approximately 2,700 days of disruption across London.

All surplus money raised through the Lane Rental scheme is reinvested into measures to further reduce the disruption.⁶²

2.4 Fines for overstaying and other penalties

Local highway authorities have the power to fine utility companies for ‘unreasonably prolonged occupation of the highway’ under section 74 of the 1991 Act. This is defined as taking longer than the time agreed with a local authority to complete street works. Companies have to agree a time with the local authority to carry out work on the roads. If they overstay, they are penalised and have to pay a daily fine. This was legislated for by the *Street works (charges for unreasonably prolonged occupation of the highway) (England) regulations 2001 (SI 2001/1281)*.⁶³ Reports on the effectiveness of this measure by the Halcrow Group in 2002, 2003 and 2004 revealed a mixed picture: while the total duration of works carried out appeared to decrease, utilities appeared to be overestimating the length of the job and/or increasing the time during the work in progress.⁶⁴

The 2001 Regulations were repealed and replaced by the *Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009 (SI 2009/303)*, following the introduction of the TMA by the Labour Government. Amongst other things, the new regulations provided for a range of daily overrun charges, from £2,500 for the busiest roads to £100 for the quietest roads, to allow the most significant works to be better targeted and better reflect the cost of the disruption caused by overrunning works.⁶⁵ The new regulations were accompanied by an updated Code of Practice.⁶⁶

As indicated in section 2.1, above, before the 2010 election the Labour Government published a consultation on increasing the maximum charges on ‘traffic-sensitive’ streets to

⁵⁹ DfT press notice, “[New powers for councils to control road works](#)”, 26 January 2012; and: DfT, [Lane rental schemes: guidance to English local highway authorities](#), January 2012

⁶⁰ *Street Works (Charges for Occupation of the Highway) (England) Regulations 2012 (SI 2012/425)*; the came into force on 14 March 2012 and will expire on 13 March 2019

⁶¹ TfL press notice, “[Green light for London to charge utility companies who dig at the busiest times and cause congestion](#)”, 11 June 2012

⁶² TfL press notice, “[Mayor's lane rental scheme cuts roadwork disruption by almost 50 per cent at traffic hotspots](#)”, 10 April 2014

⁶³ debated by the Commons Delegated Legislation Committee on [14 March 2001](#) and in the House of Lords on [30 March 2001](#)

⁶⁴ Halcrow Group for DfT, [Assessing Extent of Streetworks - Section 74 Powers](#), 2002, 2003 & 2004

⁶⁵ [Explanatory memorandum](#) to SI 2009/303, paras 8.4-8.6

⁶⁶ DfT, [Code of Practice: Section 74 - Charges for Unreasonably Prolonged Occupation of the Highway](#), 2009

£25,000.⁶⁷ In March 2012 the Coalition Government announced that the maximum charge for the busiest streets would rise from £2,500 a day to £5,000 a day for the first three days of overrun and £10,000 a day thereafter, rather than the £25,000 per day planned by the previous government. The Minister said that he considered “that the new charge level will result in a decrease in the number of works which overrun their agreed period, and better reflect the congestion costs overrunning works impose on society”.⁶⁸ This was legislated for by the *Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) (Amendment) Regulations 2012 (SI 2012/2272)*, which came into force on 1 October 2012.

On fines more generally, the 1991 Act specified some two dozen offences for failing to comply with various duties (e.g. giving sufficient notice of work; carrying out resurfacing to a proper standard; ensuring that works are properly signed and guarded). The maximum fine for these offences was set at £1,000. Furthermore, as a maximum level, this meant that the fines that were actually handed out to offenders could be lower. From May 2008, section 40 of the TMA and [SI 2007/1952](#) increased the maximum fines to either level 4 (£2,500) or level 5 (£5,000). The offences and the relevant penalties are listed in [Schedule 1](#) of the TMA. The Government also made some of the offences liable to fixed penalty notices (FPNs) (listed in [Schedule 2](#)). An authorised officer of the street authority would have to issue the FPN within a fixed time of the completion of the particular works to which the offence related. Assuming that it did not wish to contest the notice, the undertaker would have to pay the full penalty of £120 within 36 days of the day the FPN was served upon them; they may pay a discounted rate of £80 within 29 days.⁶⁹

2.5 Reinstatements

The highway authority has a duty to maintain the highway and may be liable to civil action where a highway that is badly repaired causes injury.⁷⁰ However, a highway authority cannot be held responsible for faulty works carried out by an undertaker. A point therefore has to be clearly defined as to when the responsibility for the highway surface returns to the highway authority after the completion of street works.

Sections 70-73 of the 1991 Act are concerned with this issue of ‘reinstatement’. Section 70 places the duty of reinstatement on the undertaker. Under section 70(2) the undertaker is obliged to begin the reinstatement “as soon after the completion of any part of the street works as is reasonably practicable” and to complete the reinstatement “with all such dispatch as is reasonably practicable”. The undertaker has a duty under section 70(3) to inform the street authority on the day after reinstatement is complete that he has completed the reinstatement and whether the reinstatement is interim or permanent.

The standard of reinstatement is dealt with in section 71. The undertaker is fully responsible for carrying out the work in compliance with the specification and failure to comply with the standards is a criminal offence subject to a maximum fine of £5,000. The materials to be

⁶⁷ op cit., [Consultation on the Amendment to the Charges for Unreasonably Prolonged Occupation of the Highways](#)

⁶⁸ [HC Deb 13 March 2012, c16WS](#)

⁶⁹ Regulations 7 and 8 of [SI 2007/1952](#)

⁷⁰ for further information, see HC Library standard note [SN2874](#)

used and the standard of workmanship for the reinstatement of the street are laid down in a Code of Practice.⁷¹

Under section 72 the street authority has the power to carry out such investigatory works as appear to it to be necessary to check an undertaker's work. If it is dissatisfied with the reinstatement of the street by the undertaker, the authority may serve notice on the undertaker to carry out remedial work within seven working days. If the undertaker fails to comply with the notice the street authority can carry out the work itself and recover the costs from the undertaker.⁷²

The TMA introduced new sections 73A-F into the 1991 Act to allow a street authority, in certain defined circumstances, to direct an undertaker not just to reinstate the particular part of the road disturbed by their works, but to resurface either the whole lane of that part of the road (half-width) or its full width. Under these provisions, where the condition of a specific street has deteriorated sufficiently as a result of utility works and reinstatements, an authority can serve an undertaker with a 'resurfacing notice'. The area to be resurfaced need not be confined to the immediate area of the trenches left by previous reinstatements, although there are limits as to how large an area the undertaker could be required to resurface. In certain circumstances, however, the undertaker is entitled to ask the authority to carry out the work itself.

The cost of the resurfacing works can, in theory, be shared between the authority, the undertaker carrying out the works and any other undertaker whose reinstatements contribute towards the condition of the street. The 2007 Regulations ([SI 2007/1951](#)) set out the detailed arrangements under which an undertaker can be directed in this way and include strict limits on the circumstances under which an authority is able to instruct an undertaker to carry out resurfacing, limits on the area of the street which has to be resurfaced and the materials to be used. The same Regulations determine how the costs of the resurfacing works can be shared between the various undertakers responsible for digging up the road up to that point and the street authority itself. They also allow for a process to be put in place under which an undertaker can appeal against being required to carry out resurfacing or to contribute to the cost of the works, or how disputes can be settled.⁷³

2.6 Coordination

The street authority (usually the local highway authority) is responsible for the co-ordination of its own works, as well any work carried out by public utilities and cable companies in its area. Section 59 of the TMA requires the street authority to use its 'best endeavours' to coordinate street works and section 60 requires that the undertakers should use their best endeavours to cooperate with the street authority and with other undertakers. The coordination machinery is set out in the August 2009 revised Code of Practice.⁷⁴

Under section 58 of the 1991 Act a street authority which has carried out substantial road works in a particular street can place an embargo on utilities carrying out any street works in that street for one year after the completion of the road works. There are exceptions for

⁷¹ DfT, *New Roads and Street Works Act 1991: Specification for the Reinstatement of Openings in Highways* (3rd ed. England), April 2010

⁷² DfT, *New Roads and Street Works Act 1991: code of practice for inspections* (2nd ed.), September 2002

⁷³ an estimate of the cost of the various proposals is given in the [RIA to the 2007 Regulations](#)

⁷⁴ op cit., *New Roads and Street Works Act 1991: Specification for the Reinstatement of Openings in Highways* (3rd ed. England); see also: DfT, *New Roads and Street Works Act 1991: Technical Specification for the Electronic Transfer of Notifications (EToN)* (version 5.0.1), December 2008

emergency works, specific works which the street authority has agreed to let the undertaker carry out, and such other works as may be prescribed in regulations.⁷⁵

Sections 49 and 50 of the TMA made two main changes to the previous arrangements: to allow the one year embargo period to be increased by a street authority in certain circumstances; and to extend the circumstances in which an embargo could apply, so that it could be imposed not only after substantial road works but also after substantial street works carried out by utility companies. Section 42(2) of the TMA clarified the law to make it clear that local authorities may give directions as to both timing and days. Furthermore the street authority can, in certain circumstances, direct undertakers to follow a different route that would involve less disruption. These changes came into force on 1 April 2008.

2.7 Notice

Undertakers are required to give three months' advance notice of their intention to commence works, except in certain, prescribed circumstances. Further, any undertaker proposing to break open the street or tunnel or bore under it, must give ten working days notice that he is about to begin the work. The relevant legislation is sections 54 and 55 of the 1991 Act and the 2007 Regulations ([SI 2007/1951](#)). The regulations include exceptions for emergency and urgent works (which require notice as soon as possible and within two hours of starting work); minor works not involving the break-up of the street; and remedial works to a reinstatement not causing danger to users of the street (within three days of starting work).⁷⁶

2.8 Records

When a statutory undertaker or highway authority wants to carry out works in the street it will need to obtain records from other undertakers of the location of any apparatus which they may have buried nearby, to ensure that they do not damage that apparatus in the course of their works.

However, at present there are no duties laid on those finding unmarked or wrongly marked apparatus to find out who the apparatus belongs to, mark it on their own records or alert the highway authority to its presence. Section 80 of the 1991 Act, which provides for precisely these scenarios, has never been brought into force. It states that where the person carrying out works in the street discovers apparatus belonging to an undertaker whose location is either not marked or is wrongly recorded, they must take reasonable steps to inform the owner of the apparatus where and what it is and whether it appears to be still in use. If, however, they cannot find out who the apparatus belongs to, they must mark its location on their own records (if they are an undertaker) or inform the street authority for that street as to what and where the apparatus is (if they are not an undertaker). Failure to carry out these duties is subject to a maximum fine £1,000. Sections 46 and 47 of the TMA amended the duties in section 80 and introduced a power to make regulations that would allow a practical and effective regime to be developed that was not too burdensome to the relevant undertakers.

⁷⁵ the definition of what constitutes "substantial" road works and the list of additional works which can be carried out during the embargo period are set down in [SI 2007/1951](#)

⁷⁶ *op cit.*, [New Roads and Street Works Act 1991: Specification for the Reinstatement of Openings in Highways \(3rd ed. England\)](#), section 7.5