

TRAFFIC MANAGEMENT ACT 2004

EXPLANATORY NOTES

INTRODUCTION

1. These Explanatory Notes relate to the Traffic Management Act 2004 which received Royal Assent on 22nd July 2004. They have been prepared by the Department for Transport in order to assist the reader in understanding the Act. They do not form part of the Act and have not been endorsed by Parliament.
2. The notes need to be read in conjunction with the Act. They are not, and are not meant to be, a comprehensive description of the Act. So where a section or part of a section does not seem to require any explanation or comment, none is given.

TERRITORIAL EXTENT

3. The Act extends only to England and Wales.

SUMMARY AND OVERVIEW OF THE ACT

4. The Act is in seven Parts.

Part 1

Traffic Officers

5. Part 1 empowers the Secretary of State for Transport, in his capacity as highway and traffic authority for the strategic road network in England, (i.e. most motorways and all other trunk roads), to establish a uniformed on-road traffic officer service to manage the traffic consequences of random incidents (such as accidents, obstructions, debris and break downs) and manage programmed highway events such as the passage of abnormal loads. In practice the Secretary of State carries out his functions as highway and traffic authority through the Highways Agency, which is an executive agency of the Department for Transport, and the Highways Agency would be implementing this part of the Act on his behalf.
6. The Act also empowers the National Assembly for Wales, in their capacity as highway and traffic authority for the strategic road network in Wales, to so establish a traffic officer service in Wales.
7. The Act enables some traffic management functions on motorways and other trunk roads currently carried out by the police to be carried out by traffic officers. The Act provides for traffic officers to have powers to stop and direct traffic, and place and operate traffic signs to deal with incidents and keep traffic moving.

Part 2

Network management by local traffic authorities

8. Part 2 imposes a duty on all local traffic authorities to secure the expeditious movement of traffic on their road networks, and to facilitate the expeditious movement of traffic on other authorities' networks. Authorities are required to make arrangements as they consider appropriate for planning and carrying out the action to be taken in performing the duty; part of the arrangements must be the appointment of a "Traffic Manager".

9. If an authority is failing properly to perform its network management duty, or duty to make appropriate arrangements, then the Act provides for the Secretary of State (in England) and the National Assembly for Wales (in Wales) to appoint a "Traffic Director" in relation to that authority. The national authority must, among other things, set out such objectives for the traffic director as the national authority considers will secure that the duty or duties are being properly performed.

Part 3

Permit schemes

10. Part 3 provides for the introduction of permit schemes by order of the Secretary of State (in England), and the National Assembly for Wales (in Wales). A permit scheme would control specified works in the street in a particular area and would require a permit to be obtained for such works. The Act provides that permit schemes could extend to works such as road works and street works, and could extend to corresponding works. A permit scheme may provide for conditions to be attached to permits which would apply in relation to the carrying out of specified works.

Part 4

Street Works

11. Part 4 provides for changes to the regulatory regime for utility companies' street works.

12. The Act also provides for increases in levels of fines of specified offences, and provides for highway authorities to issue Fixed Penalty Notices for certain offences.

Part 5

Highways and Roads

13. Part 5 includes specific measures that alter the arrangements for traffic management in London. These include provisions for the Secretary of State to designate an initial network of strategic roads (and for changes to that network to be made by the Assembly or the Mayor of London acting on its behalf). The purpose of designating this network is to enhance Transport for London's (TfL's) powers in relation to Borough roads by enabling it to object to proposals that would affect strategic roads.

14. The Act also amends the Highways Act 1980, most notably to provide for regulations to apply 'lane rental' charges to skips, scaffolding, building materials and temporary excavations that occupy the highway.

Part 6

Civil enforcement of traffic contraventions

15. Part 6 includes powers providing a single framework to make regulations for the civil enforcement by local authorities of parking and waiting restrictions, bus lanes and some moving traffic offences. These regulations will replace existing powers in national and London local legislation. It will enable regulations to be made giving authorities outside London civil enforcement powers to cover some moving traffic offences (such as ignoring the rules at box junctions and banned turns) using camera evidence, and additional powers in respect of parking enforcement which already exist in London.

16. The Act also gives the appropriate national authority a reserve power to direct a local authority outside London to apply for civil parking enforcement powers.

Part 7

Miscellaneous and general

17. Part 7 contains general and miscellaneous provision, including provision relating to Blue Badges, for the application of surplus income from parking places, and financial provision for the establishment of traffic officers.

COMMENTARY ON SECTIONS

Part 1: Traffic Officers

Background

18. The Government has charged the Highways Agency with developing its role as strategic road network operator. In pursuance of this the Agency has undertaken, in partnership with the Association of Chief Police Officers, a review of the roles and responsibilities of both the police and the Highways Agency for traffic management on the network. The review concluded that responsibility for a number of tasks associated with traffic management should transfer from the police to the Highways Agency. It recommended that the Highways Agency assume a greater traffic management role and establish:-

- Traffic Officers: On-road officers who would have the powers to stop and direct traffic, and whose main role would be to support road users and keep traffic flowing by implementing traffic management measures.
- Regional Control Centres: Control offices around the network, to be staffed by both the Highways Agency and police, which would monitor and manage traffic on the network and direct on-road resources.

19. On 20th June 2003 the Secretary of State for Transport made a statement to the House of Commons setting out his policy for future management of the network. The statement indicated that the Government endorsed the review and that the Agency would be working with the police and others to implement its recommendations.

20. The Secretary of State has the legal power to establish and operate regional control centres, but primary legislation is required in order to establish traffic officers with traffic management powers.

Sections 1 & 2: Designation of traffic officers

21. These sections empower the Secretary of State (in England) and the National Assembly for Wales (in Wales), to designate individuals to act as traffic officers or to authorise another to do so. Traffic officers would thus either be employed directly by the appropriate national authority or they would be employed by external service providers. During the early years of operating a traffic officer service in England it is expected that all traffic officers will be designated by the Secretary of State and will be employees of the Highways Agency. In the longer term there is the option to employ contractors to provide the traffic officers.

22. Traffic officers' duties must be related to the management of traffic on roads for which the appropriate national authority is the traffic authority, or the performance of any of the authorities' other functions as highway or traffic authority for trunk roads. Thus for example, in addition to traffic management, they would be able to carry out incidental or supportive tasks such as monitoring the condition of the road and reporting on any defects or problems.

Section 3: Jurisdiction of traffic officers

23. *Section 3* defines the roads over which traffic officers will be able to exercise their special powers (see *section 5* and the notes on that section). These are likely to be all roads for which the national authority is the traffic authority within the relevant national boundary. However, the section provides that their jurisdiction may be limited to specific roads. This might be used where traffic officers are designated by service providers who have a contract to provide a traffic service for a specific area.

Section 4: Powers to direct traffic officers

24. Traffic officers would be directed by or on behalf of the appropriate national authority. However, to prevent any potential conflict between their role on the ground and that of the police in dealing with traffic accidents or incidents this section empowers the police to exercise primacy. In practice, this means that the police may opt to deal with incidents themselves, with or without traffic officer support, or allow traffic officers to act without police involvement. This section also provides that where traffic officers are contracted out, the appropriate national authority may still give them direct instructions.

Section 5: The special powers of a traffic officer

25. *Section 5* sets out restrictions and limitations on the exercise of traffic officers' constabulary-type powers, referred to as "special powers". Those special powers are the power to stop and direct traffic, power to place temporary traffic signs, and any other constabulary-type power which they may be given by legislation.

26. These powers may only be used to assist traffic movement, avoid danger to persons or traffic or prevent damage to the road or anything on or near the road or for incidental purposes.

27. Traffic officers would be able to use their special powers on roads within their jurisdiction. They would also be able to use their special powers on any other roads in England and Wales provided they were acting under the direction of the police for the area in which the road is situated or with the consent of the traffic authority for the road.

28. In practice, this means, for example, that although traffic officers' jurisdiction is to be on the national authority's roads, where an accident on such a road results in significant impact

on traffic elsewhere, or where advance warnings need to be in place quickly on approach roads to warn traffic of problems on the national authority's road, traffic officers might be asked to operate temporarily on a local road at the direction of the police, or with agreement of the local highway authority. It is anticipated that operating protocols will be agreed in advance with the local highway authorities and police. A similar approach applies at the border between England and Wales.

Section 6: Powers to stop or direct traffic

29. *Section 6* provides for traffic officers to have similar powers to those held by the police under the Road Traffic Act 1988 ("RTA") to require vehicles, cyclists and pedestrians to stop and to require vehicles and cyclists to proceed in a particular direction.

30. The section 35 RTA offences (failure of drivers or cyclists to stop or proceed as directed) carry a maximum fine of level 3 on the standard scale (£1,000) and in certain cases endorsement and possibly disqualification. The offences are also fixed penalty offences carrying fines of up to £60.

31. The section 37 RTA offence (failure of pedestrians to stop when directed) carries a maximum fine of level 3 on the standard scale (£1,000).

32. The section 163 RTA offence (failure of drivers or cyclists to stop when directed) carries a maximum fine of level 3 on the standard scale (£1,000). The offence is also a fixed penalty offence carrying a fine of £30.

Section 7: Powers to place temporary traffic signs

33. *Section 7* provides for traffic officers to have a similar power to a police constable to place and maintain traffic signs on the highway. The signs may be used to indicate prohibitions, restrictions or requirements relating to traffic to deal with congestion or obstruction of traffic or danger to or from traffic. Such signage may be placed for a period of up to seven days.

34. The effect of *subsection (2)* is that section 36 of the Road Traffic Act 1988 applies to any traffic signs so placed by traffic officers. Section 36 makes it an offence not to comply with traffic signs to which it applies.

35. Breach of section 36 carries a maximum fine of level 3 on the standard scale (£1,000). In addition, for breach of certain signs (e.g. stop signs) endorsement is obligatory and disqualification is discretionary. Breach is also a fixed penalty offence with fines of up to £60.

Section 8: Power to confer further special powers on traffic officers

36. *Section 8* makes provision for the appropriate national authority to confer further "special powers" on traffic officers by order made by statutory instrument.

37. The Act imposes limitations on both the extent of the powers which may be conferred as well as the purposes for which they may be exercised. Firstly, *subsection (2)* requires the national authority to be satisfied that any such special power would be necessary to facilitate the performance of any duties which may be assigned to traffic officers. The duties which may be assigned to traffic officers are defined by *section 1*.

38. Secondly, the exercise of special powers is subject to the restrictions set out in *section 5. Subsection (3)* of that section provides that special powers may only be exercised for one or more of the purposes specified there.

39. *Subsection (3)(b)* provides that an order may contain supplemental, incidental transitional or consequential provisions including provision amending existing legislation. The possible use for this power can be seen in the existing special powers granted to traffic officers by sections 6 and 7 of the Act and the associated repeals (see section 98 and Part 2 of Schedule 12). The approach adopted for conferring these special powers is to extend to traffic officers the existing statutory powers granted to police officers. This approach requires amendment of or reference to relevant statutes. It is likely that any further special powers would be similarly granted by way of adoption of existing statutory provisions, or by way of addition to existing road traffic legislation necessitating alteration of related provisions. The wording used in *subsection (3)(b)* would enable this.

40. The Secretary of State may not make such an instrument unless a draft has been approved by both Houses of Parliament. One made by the National Assembly in relation to Wales would be subject to the Assembly's own procedures, in accordance with the Government of Wales Act 1998. These include a requirement for an affirmative vote of the Assembly in plenary session.

Section 9: Removal of certain vehicles by traffic officers

41. *Section 9* modifies, in the case traffic officers, the Secretary of State's power under section 99 of the Road Traffic Regulation Act 1984 to make regulations providing for the removal of vehicles obstructing the highway, or abandoned or broken down or dangerously or illegally parked.

42. Where under section 99 the Secretary of State makes regulations empowering traffic officers to remove such vehicles *section 9* will enable consequential provisions to be included. In particular this would enable provisions for the disposal of any such vehicles and for the recovery of the costs relating to their removal storage and disposal. Such provision would be likely to be by way of amendment to sections 100 to 102 of the 1984 Act. *Subsection (2)* would enable this.

43. Regulations made under section 99 of the 1984 Act are, by section 134(3) of that Act, subject to the negative resolution procedure.

Section 10: Offences

44. *Section 10* makes it an offence to assault, resist, wilfully obstruct, or impersonate a traffic officer or fail to give a name and address to a traffic officer when lawfully demanded (as to which see *subsections (4) and (5)*). The penalties for these offences vary with the offence and are set out in the section. This provides for penalties of fines not exceeding respectively level 5 (£5,000) or level 3 (£1,000) on the standard scale and also for imprisonment.

Section 11: Uniform

45. *Section 11* provides for the uniform to be worn by traffic officers to be determined by the appropriate national authority. By virtue of *subsection (6)* of *section 5* a traffic officer may not exercise his special powers on a road unless he is in uniform.

Section 13: Power to acquire land

46. *Section 13* gives the appropriate national authority the power to acquire land, if necessary, for the traffic officer service or for other purposes connected with the management of traffic such as for the provision of traffic control centres. Such land may be bought by agreement or compulsorily.

Section 14: Financial assistance to authorised persons

47. *Section 14* provides a power to provide financial assistance to authorised persons in respect of traffic officers designated by them.

Part 2: Network Management by Local Traffic Authorities

Section 16: The network management duty

48. *Section 16* places a duty on every local traffic authority to manage its road network to secure the expeditious movement of traffic on their road network, and to facilitate traffic movement on other traffic authorities' road networks. The network must be managed with a view to achieving the objective of the duty, so far as may be reasonably practicable, having regard to the local authority's other obligations, policies and objectives. The action a local authority may take in performing the duty includes the exercise of any powers affecting the use of the network, whether or not those powers were conferred on the authority in their capacity as a traffic authority.

Section 17: Arrangements for network management

49. *Section 17* requires authorities to make arrangements to carry out their network management duty under section 16. The arrangements must, among other things, include the appointment of a "Traffic Manager".

Sections 18 & 19: Guidance and power to require information

50. *Sections 18 and 19* provide for the Secretary of State (in England), or the National Assembly for Wales (in Wales) to issue guidance to authorities about the techniques of network management or other matters relating to the exercise of their network management duties and to obtain information from authorities connected with the performance of those duties. The Secretary of State and National Assembly for Wales are identified in the provisions of Part 2 of the Act as "the appropriate national authority".

Section 20: Intervention Notices

51. *Section 20* provides power for the Secretary of State (in England) and the National Assembly for Wales (in Wales) to give an intervention notice to a local traffic authority. *Subsection (3)* requires the authority to provide any information requested in the notice. *Subsection (2)(b)* provides the authority with an opportunity to make representations. *Subsection (5)* provides that the Secretary of State must consult the Mayor prior to any giving notice in respect of a London authority and, if it is given, provide him with a copy of the notice.

Sections 21: Intervention Orders

52. *Section 21* provides for an Intervention Order in connection with the appointment of a "Traffic Director" to an authority by the Secretary of State or National Assembly, as appropriate, in the event that they are satisfied that the authority is failing to perform any duty

under sections 16 and 17. Under *subsection (3)* the Order must set out the grounds for the appointment and the Traffic Director's objectives.

53. A Traffic Director may be given the powers which are described in general terms in *subsection (5)*. These are to monitor, to report, to intervene in the activities of the local authority, and to carry out functions of the local authority. *Subsection (7)* enables the scope of those general powers, as well as when and how such powers may be exercised, to be limited by the Order.

54. *Subsection (8)* defines the scope of the ancillary powers which may be conferred on the Traffic Director, which may include a requirement for the local authority to provide him with information and assistance. *Subsection (9)* provides for the amendment of the intervention order setting out the powers of the Traffic Director, after he has been appointed, but only after consultation with the local authority. *Subsection (10)* provides that the Secretary of State shall consult the Mayor prior to making an intervention order in respect of a London authority.

Section 23: Monitoring and Reporting

55. *Section 23* provides that the Intervention Order may confer on a Traffic Director a power to monitor the performance of the local authority of their duties under section 16 and 17 and a power to make reports to the local authority and/or Secretary of State (in England) or the National Assembly for Wales (in Wales).

Section 24: Intervention in activities of local traffic authority

56. *Section 24* provides for the powers that an Intervention Order may confer on a Traffic Director to direct a local authority to take (or not take) certain actions.

Section 25: Exercise of local traffic authority functions

57. *Section 25* provides that an Intervention Order may confer on a Traffic Director a power to exercise specified functions in place of the authority.

Section 26: Application of sections 20 to 25 to Local Traffic Authorities exercising functions jointly

58. Authorities may exercise jointly a function which is relevant to achieving their duties under sections 16 and 17. *Section 26* enables the Secretary of State or National Assembly, by Order, to apply sections 20 to 25 to such cases. *Subsection (2)* provides that such an Order made by the Secretary of State shall be subject to negative resolution in either House of Parliament.

Sections 27 & 28: Criteria for making Intervention Orders and Guidance to Traffic Directors

59. *Section 27* requires the Secretary of State or National Assembly to give guidance about the criteria which it proposes to apply in deciding whether to intervene under this Part. *Subsection (2)* of that section provides that the guidance shall be appended to an Order made by the Secretary of State (in England) or National Assembly for Wales (in Wales). *Subsection (3)* provides that an Order of the Secretary of State will be subject to negative resolution in either House of Parliament. *Section 28* allows the Secretary of State (in England) or National Assembly for Wales (in Wales), to issue guidance to Traffic Directors. This is not subject to Parliamentary procedure.

Section 29: Traffic Directors in London

60. *Section 29* provides for the relationship between the Mayor and a Traffic Director appointed in relation to a London authority, or where a Traffic Director is appointed in relation to Transport for London. *Subsection (3)* provides that a Traffic Director need not comply with a direction from the Mayor under Part 4 (Transport) of the Greater London Authority Act 1999.

61. *Subsections (6) and (7)* provide that where a Traffic Director is appointed in relation to TfL, and exercises the power of TfL to object to a Borough proposal under s. 301A (3) of the Highways Act 1980 or s. 121B(3) of the Road Traffic Regulation Act 1984 (or directs TfL to exercise this power), the Greater London Authority will not be able to override this objection by giving its consent.

Section 30: Recovery of costs from local traffic authorities

62. *Section 30* provides that the Secretary of State (in England) or the National Assembly for Wales (in Wales), may recover from an authority the expenditure it has incurred in appointing a Traffic Director to that authority (including expenditure towards any costs incurred by the Traffic Director), after allowing for any of the Traffic Director's costs that are met from other sources.

Section 31: Interpretation of Part 2

63. *Section 31* defines various terms in Part 2. It should be noted that local traffic authorities in England are Transport for London, London Borough Councils, the Common Council of the City of London, County Councils, Metropolitan District Councils and Unitary Councils. Among other things, the section provides that "London authority" means Transport for London, a London Borough Council or the Common Council of the City of London; "Mayor" means the Mayor of London; and defines "road network". It also provides that "traffic" includes "pedestrians".

Part 3: Permit schemes

Section 32: Meaning of "permit scheme"

64. *Section 32* defines the expression "permit scheme" and indicates the provisions which can be included in a permit scheme. The provisions include:

- provisions as to the type of works which do and do not require permits and provisions as to cases where works can be carried out without the issue of a permit (for instance in the case of emergencies);
- provisions as to the conditions which can be attached to the grant of a permit;
- provisions as to arrangements for reviewing or varying permits that have already been issued.

Section 33: Preparation of permit schemes

65. *Section 33* makes provision with respect to the preparation of permit schemes.

66. Individual local highway authorities (e.g. a county council), or two or more such authorities, may prepare and submit a permit scheme to the appropriate national authority. In

this Part, the appropriate national authority is the Secretary of State (in England), or the National Assembly for Wales (in Wales).

67. The appropriate national authority may direct an individual highway authority, or two or more such authorities, to prepare and submit to it a permit scheme in the form it directs.

68. In addition, the appropriate national authority can prepare a permit scheme. Such a scheme prepared by the Secretary of State could cover streets in the Royal Parks.

69. The section provides that those preparing permit schemes must comply with any regulations made under this Part of the Act (referred to in this Part as “permit regulations”). In addition, those preparing schemes must have regard to any guidance that may be issued by the appropriate national authority.

Section 34: Implementation of local highway authority permit schemes

70. *Section 34* provides for the implementation of local highway authority permit schemes. Such a scheme shall not come into effect other than by an order of the appropriate national authority. The order must set out the scheme and specify the date on which it starts operation. The order may include provisions which disapply or modify enactments provided the provisions are in accordance with permit regulations.

Section 35: Implementation of other permit schemes

71. *Section 35* makes provision corresponding to *section 34* in relation to permit schemes prepared by the appropriate national authority.

Section 36: Variation and revocation of permit schemes

72. *Section 36* provides that the appropriate national authority may subsequently make a further order varying or revoking a permit scheme which is in force. An order under this section may relate to one or more permit schemes. In addition, an order may vary or revoke an order previously made by a national authority giving effect to a particular permit scheme, or an order under this section. An order made under this section may revoke or disapply enactments to the extent specified in the order, provided that it is in accordance with permit regulations.

Section 37: Permit regulations

73. *Section 37* enables the appropriate national authority to issue permit regulations which make provision with respect to the content, preparation, submission, approval, operation, variation or revocation of permit schemes.

74. *Subsection (2)* enables the regulations to provide for certain standard provisions to apply in relation to permit schemes.

75. *Subsection (3)* enables regulations to make provision in relation to the matters mentioned in *section 33(2)*, including, for example, provision as to the types of conditions that can be attached to a permit. *Subsection (3)(b)* enables the regulations to make provision for the purpose of limiting the streets, or type of streets, which may be subject to a permit scheme.

76. *Subsection (4)* enables the regulations to make further provision, including:

*These notes refer to the Traffic Management Act 2004 (c18)
which received Royal Assent on 22 July 2004.*

- the criteria which permit scheme operators have to take into account in deciding whether to issue a permit, with or without conditions, or in considering whether to review or vary a permit;
- provision for the determination of disputes or to enable the facilitation of the determination of disputes (including provision as to mediation, representations, hearings, arbitration and adjudication if appropriate). Connected matters such as costs could also be provided for, as well as provision for the appointment of persons to make or facilitate the determination of disputes.
- conferring a right of appeal (including provision for persons to hear appeals);
- the creation of one or more criminal offences (attracting a maximum fine of £5,000 on summary conviction) in connection with permits.

77. *Subsection (5)* provides that regulations made under subsection (4) require the consent of the Lord Chancellor before they can be made in cases where the regulations make provision for or in connection with adjudication.

78. *Subsection (6)* provides that regulations may provide for the introduction of fixed penalty notices in relation to any of the criminal offences which are created under the regulations.

79. *Subsection (7)* enables the regulations to make provision for the payment of fees in connection with one or more specified stages of the permitting process, including an application for the issue of a permit.

80. *Subsection (8)* enables the regulations to make further provision in relation to the payment of fees, including cases where fees are not payable, provision for the repayment of fees, what those fees should be and what use permit scheme operators can make of any sums raised through fees.

81. *Subsection (9)* requires that the national authority, in making regulations in relation to permit fees, must try to ensure that the fees payable by users of the schemes do not exceed certain costs. The costs may prescribed by the national authority, and these could include, for instance, costs in connection with issuing permits, keeping a register of permits and enforcement measures for schemes, such as inspectors.

82. *Subsection (10)* enables the national authority to make use of estimates of costs when it makes an assessment of the level of costs to authorities of operating a permit scheme. These estimates may include the average costs to authorities or to particular descriptions of authority.

83. *Subsection (11)* enables the regulations to require registers to be kept with information on permits and to make provision in connection with the access to information contained in such a register, and for the keeping of accounts in relation to permit schemes.

84. *Subsection (12)* enables the regulations to provide for cases in which a highway authority, or two or more highway authorities acting together, can prepare a permit scheme in respect of streets for which they are not the highway authority.

85. *Subsection (13)* enables the regulations to modify or disapply enactments in connection with permit schemes.

Section 38: Crown application

86. *Section 38* provides for permit schemes to apply to works carried out by, or on behalf of, central government. Works carried out by or on behalf of the Queen in her private capacity will not require a permit.

Section 39: Interpretation of Part 3

87. *Section 39* defines certain expressions and words used elsewhere in Part 3. Of particular note is the definition of "works". This defines the works for which it might potentially be necessary to obtain a permit in areas where a scheme is in operation. This includes utility street works and works governed by the Highways Act 1980. The latter could include highway authority road works, the placing of skips and the deposit of building materials in the highway.

88. The section provides that the Secretary of State may not make the first set of permit regulations unless a draft has been approved by both Houses of Parliament. Any further permit regulations will be subject to the negative resolution Parliamentary procedure.

Part 4 : Street Works

89. Part 3 of the New Roads and Street Works Act 1991 (NRSWA) contains the scheme for managing street works in England and Wales. All references in this part to NRSWA are to be taken as references to Part 3 of that Act. The regulation making powers in NRSWA are exercised by the Secretary of State (in England), and by the National Assembly for Wales (in Wales). References in this Part to the power of the Secretary of State to make regulations should be read accordingly.

Section 40 and Schedule 1: Increase in penalties for summary offences under 1991 Act

90. *Section 40* increases the maximum fines for a number of summary offences under NRSWA from level 3 (£1,000) to levels 4 (£2,500) or 5 (£5,000).

91. *Subsection (3)* increases the maximum fine to level 4 (£2,500) in the case of an offence consisting of a failure to comply with section 70(3) (requirement to give notice of completion of permanent or interim reinstatement) or 70(4A) (requirement to give notice of completion of reinstatement), and to level 5 (£5,000) for other offences under that section.

92. *Subsection (4)* increases the maximum fines for offences under regulations made under section 74 (overrun charges) and section 74A (lane rental) to level 4. These offences relate to failure to give notices.

93. *Subsection (5)* increases the penalties for offences under section 88 of NRSWA (which relates to cases where an undertaker carries out street works affecting the structure of a bridge). The maximum fine for the offence of failing to give the bridge authority reasonable facilities for monitoring the execution of the works is increased to level 4. The maximum fine for the offence of failing to consult the bridge authority before giving notice or failure to comply with a requirement necessary for the protection of the bridge is increased to level 5.

Section 41 and Schedules 2 and 3: Fixed penalty offences

94. *Section 41* inserts a new section 95A into NRSWA to create a fixed penalty notice system for offences.

95. The table identifying the offences to which fixed penalty notice regime applies is in Schedule 2 to the Act (which inserts a new Schedule 4A to NRSWA). The details of how the system will operate are contained in Schedule 3 to the Act (which inserts a new Schedule 4B to NRSWA).

96. *Subsection (1)* of the new section 95A provides that any offence under Part 3 of NRSWA which is listed in the first column of the new Schedule 4A is a fixed penalty offence for the purposes of that Part.

97. *Subsection (2)* of the new section 95A provides that offences committed by virtue of section 166 of NRSWA are not fixed penalty offences. In general terms, the effect of section 166 is that in cases where an offence by a body corporate is committed with the connivance or consent, or is attributable to any neglect on the part of a director, manager, secretary or other similar officer of the body, then that officer is also guilty of an offence, and is liable to be prosecuted in the courts. Given subsection (2), the street authority will continue to prosecute such offences through the Magistrates' Court. Section 166 of NRSWA deals separately with the position of Scottish partnerships in Scotland. The Act does not extend to Scotland, and the reference to Scotland in the Act is simply to accurately reflect the ambit of section 166.

98. *Subsection (3)* of the new section 95A provides that the Secretary of State may by order modify the new Schedule 4A in NRSWA to provide for an offence under Part 3 of NRSWA to become or cease to be a fixed penalty offence. *Subsection (4)* of the new section 95A provides that the Secretary of State may not make such an order unless a draft has been approved by both Houses of Parliament.

99. Schedule 3 to the Act inserts a new Schedule 4B into NRSWA, which contains the provisions that apply where an authorised officer of a street authority gives a person (generally an utility) a fixed penalty notice.

100. Paragraph 4 of Schedule (4B) provides for the amount of the penalty and the period for payment. Sub-paragraph (1) of that paragraph provides that (subject to paragraph 5) the penalty is to be prescribed by the Secretary of State, but that it may not exceed 30% of the maximum fine for that offence. Sub-paragraph (2) provides that the period for payment of the penalty is the period of 29 days beginning with the day on which the notice is given, and sub-paragraph (3) provides a power to the street authority to extend the period for paying the penalty if they think it appropriate to do so.

101. Paragraph 5 of the Schedule provides for the amount of the penalty to be discounted, and the period for payment of that discounted penalty. Sub-paragraph (1) of that paragraph provides that the discounted penalty is payable if payment is made during the period of 15 days beginning with the day on which the notice is given. Sub-paragraph (2) provides that the discounted amount is prescribed by the Secretary of State and may not exceed 25% of the maximum fine for that offence.

102. Paragraph 6(2) of the Schedule provides that no proceedings for the offence may be commenced before the end of the period for payment of the penalty, and paragraph 6(3) provides that no proceedings may be commenced or continued if payment of the penalty is made before the end of the period for payment of the penalty, or accepted by the street authority after that time. It is a matter for the street authority whether to accept a payment after the period for payment of the penalty has passed.

103. Paragraph 7 of the Schedule provides for a power of the street authority to withdraw notices, in cases where they have been erroneously served or consider there are extenuating circumstances. Sub-paragraph (3) provides that the street authority is bound to consider any representations made by or on behalf of a person given a notice, and that they must decide in all the circumstances whether to withdraw the notice.

104. Where the penalty is not paid during the period for payment, the street authority may commence a prosecution in the Magistrates Court in the usual way.

105. Paragraph 8 of the Schedule provides that the Secretary of State may (with the consent of the Treasury) make regulations about the application by street authorities of fixed penalties paid under the Schedule and for the keeping of accounts etc.

106. Paragraph 9(a) and (c) of the Schedule provides that the Secretary of State may make regulations prescribing the circumstances in which a fixed penalty notice may not be given, and the methods for the payment of penalties (which may, for example, be electronic). Paragraph 9(b) enables the Secretary of State (in England) or the National Assembly for Wales (in Wales) to substitute the periods specified in paragraphs 4(2) and 5(1) (period for payment of the penalty and discounted penalty respectively) for different periods. The regulations would be subject to the negative procedure.

Section 42: Duty of street authority to co-ordinate works

107. Under section 59 of NRSWA, a street authority has a duty to co-ordinate statutory undertakers' street works and their own road works. The section amends section 59 to provide for that duty to be extended to encompass the co-ordination of certain other prescribed temporary activities on the highway, for example the placing of skips and scaffolding.

Section 43: Directions relating to timing of street works

108. *Section 43* amends section 56 of NRSWA. Section 56 gives authorities certain powers to direct utilities as to the time at which their works may be carried out, where the authority believe that the works would otherwise cause serious disruption to traffic. At present NRSWA enables the authority to direct the utility only to carry out work at certain times of the day, for example between 10am and 3pm. If they work outside of the directed times they commit an offence.

109. The amendment made by *subsection (2)* enables an authority to direct a utility only to carry out works at certain times and on certain days, or both at certain times and days, for example between 10am and 3pm on the 1st and 2nd of November.

110. At present, the direction may only deal with proposed works. *Subsection (3)* adds a new *subsection (1A)* to section 56 of NRSWA, which enables a street authority to make a direction where works have already commenced.

Section 44: Directions as to placing of apparatus

111. *Section 44* inserts a new section 56A into NRSWA. Section 56A enables the street authority to direct an undertaker not to use a proposed street to place their apparatus, if it appears to the street authority that this is likely to cause disruption to traffic, and there is another street in which the apparatus could be placed. In order to make such a direction there has to be at least one other reasonable alternative route, which if used would result in less

disruption. Further, the installation of the apparatus in the alternative street must be a reasonable way of achieving the purpose for which the apparatus is to be placed, and it must be reasonable to require the undertaker not to place the apparatus in the street proposed by the undertaker. In making its direction, the authority cannot direct an undertaker to use a particular alternative street, but may merely prevent the undertaker from installing apparatus in certain streets. The section creates a level 5 offence for contravening such a direction.

112. *Subsection (4)* provides for regulations prescribing the procedure for giving directions and *subsection (5)* provides for regulations dealing with appeals. *Subsection (8)* provides that the Secretary of State may issue or approve a code of practice giving practical guidance as to the exercise by street authorities of the power conferred by this section, and provides that in exercising that power a street authority must have regard to the code of practice.

Section 45: The street works register

113 *Section 45* amends section 53 of the NRSWA which places a duty on street authorities to keep a register showing with respect to each street for which they are responsible such information as may be prescribed with respect to the street works, and such other descriptions of works as may be prescribed, executed or proposed to be executed in the street (an example of other works are local authority road maintenance works).

114. *Subsection (2)* amends section 53(1) so as to confer a power to make regulations to require the street authority to keep additional information on the register, including information about any of the following:

- apparatus placed or proposed to be placed in the street;
- builders' skips deposited or proposed to be deposited in the street;
- scaffolding or other structures, which are erected, or proposed to be erected in the street.

115. *Section 53(4) and (5)* of NRSWA provide that the Secretary of State can make arrangements for the duty of an individual street authority to keep a register for its area to be satisfied by the appointment of someone to keep one or more "central" registers. *Subsection (3)* inserts a new subsection (4A) into section 53 providing that a "central register" means a register covering two or more authority areas.

116. *Subsection (4)* inserts a new subsection 5(A), which enables the Secretary of State to require a street authority to share information on its register with a person appointed to keep a central register.

Section 46: Records of location of apparatus

117. *Section 46* amends section 79 of NRSWA which requires, except in such cases as may be prescribed, that an undertaker shall record the location of every item of apparatus belonging to him as soon as reasonably practicable after placing it in the street or altering its position, locating it in the street in the course of executing any works, or being informed of its location under section 80 of NRSWA (duty to inform undertakers of location of unidentified apparatus).

118. *Subsection(2)* inserts a new subsection (1A) into section 79 of NRSWA. It provides that an undertaker can (except in circumstances prescribed in regulations) include in its section 79

records other records not required to be included in the records kept by undertakers under section 79.

119. *Subsection (3)* inserts a new subsection (2A) into section 79 of NRSWA. It provides that regulations under section 79(2) as to the form and manner of records (for instance regulations providing that the records should be held in electronic form) may apply to records made before the regulations take effect.

Section 47: Duties relating to the location of unexpected apparatus

120. *Section 47* amends section 80 of NRSWA which imposes duties on a person carrying out works in the street where he discovers apparatus belonging to another person which is either not marked, or is wrongly marked, on existing location records.

121. *Subsection(2)* amends section 80(1) of NRSWA to clarify that the records in question are those kept by undertakers under section 79 of that Act.

122. *Subsection (3)* inserts a new subsection (1A) into section 80 to provide that regulations may prescribe exceptions to the duty in section 80. *Subsection (4)* substitutes subsections (2) and (2A) into section 80. Subsection (2) provides that a person executing works of any description in the street who finds apparatus which does not belong to him, and who is unable, after taking such steps as are reasonably practicable, to ascertain to whom the apparatus belongs, must comply with such requirements as may be prescribed in regulations for making and keeping a record of the location and nature of the apparatus and whether it is in use, and to inform the street authority or any other person of those matters. Subsection (2A) provides that regulations under subsection (2) may make provision as to the form and manner in which records are to be kept, and the manner in which or time at or by which information is to be given, and also for records which are to be kept by undertakers to be included in the records kept by them under section 79(1).

123. *Section 80(4)* of NRSWA provides that it is an offence not to comply with the requirements set down in section 80(1) and 80(2). *Subsection (5)* provides that the offence applies in respect of any requirement imposed upon a person under subsection (2).

124. *Subsection (6)* allows for the establishment of one or more registers of information to be held on apparatus which is unearthed in the course of works where it is not possible to identify who the apparatus belongs to.

Section 48: Duty to inspect records

125. *Section 48* inserts section 53A (duty to inspect records) into NRSWA. That section enables the Secretary of State to create a new duty in regulations requiring an undertaker who wishes to carry out street works to inspect statutory records (for instance records of the apparatus already located in that street) before doing so. The street works to which the duty applies and the records which must be inspected are to be set out in regulations.

126. The procedure for inspecting records, and how an undertaker could prove that he had carried out an inspection, may be set out in regulations.

127. The inserted section also enables the regulations made under it to create a level 5 offence (with a maximum fine of £5,000) where an undertaker fails to comply with the requirements of the regulations.

Section 49: Notices of street works

128. *Section 49* rectifies some problems with the giving of advance notices by undertakers under sections 54 and 55 of NRSWA. *Subsection (1)* amends subsection (3) of section 54 of the 1991 Act. It provides that the advance notice under section 54 must contain the date when the works are intended to start and such other information as may be prescribed. It also inserts a new subsection (4A) into section 54. This requires that if an undertaker does not submit before this start date a further notice, required nearer to the time of works under section 55, then it must supply the authority with a further notice. This notice will contain such information as may be prescribed. *Subsection (1)* also inserts a new subsections (4B) and (4C) into section 54 which provides that if works have not substantially begun within a prescribed period after the proposed start date in a section 54 advance notice, then the notice ceases to have effect, meaning the proposed works cannot lawfully begin. If the undertaker still wishes to carry out the works, he will have to start the process of giving advance notice all over again. Different periods may be prescribed for different descriptions of works.

129. *Subsection (2)* inserts new subsections (8) and (9) into section 55 of NRSWA to provide that if a notice becomes invalid under section 55 then an undertaker must provide a further notice containing such information as may be prescribed. If the undertaker fails to provide this further notice he commits a criminal offence and is liable on summary conviction to a fine not exceeding level 4 fine on the standard scale (£2,500). *Subsection (3)* amends section 93, to make similar provision in respect of works affecting level crossings or tramways.

Section 50: Qualifications of supervisors and operatives

130. *Section 50* amends section 67 of NRSWA which provides that when carrying out street works involving breaking up the street, or any sewer, drain or tunnel under it, or tunnelling or boring into the street an undertaker must secure that, except in such cases as may be prescribed, the execution of the works is supervised by a person having a prescribed qualification. They must also ensure that when such works are in progress there is always at least one person on site having a prescribed qualification as an operative. *Subsections (2)* and *(3)* insert new subsections (1A)(a) and (2A)(a) into section 67, to enable a street authority where such works are taking place or have taken place, to require by notice that an undertaker provide the names of the current or previous qualified persons, and evidence of the required qualification.

131. *Subsections (2)* and *(3)* also insert new subsections (1A)(b) and (2A)(b) into section 67 to enable regulations to prescribe the evidence that undertakers must supply in the cases of both supervisors and operatives.

132. Subsection (2B) inserted by *subsection (3)* provides that a notice under subsections (1A) or (2A) may be given at any time while the works are being executed or within such period after their completion as may be prescribed.

133. *Subsection (5)* amends the existing powers of the Secretary of State to make regulations dealing with the training qualifications issued by approved training bodies. It provides that the regulations may prescribe the form of any document issued by an approved body to certify a qualification.

Section 51: Works following substantial road works

134. *Section 51* amends the existing provision restricting street works following substantial road works carried out by the highway authority. Section 58 of NRSWA provides that where a street authority propose to carry out substantial road works in a highway, the street authority may by notice restrict the execution of street works during the twelve months following the completion of the road works.

135. *Subsections (2) and (3)* amend section 58 so as to provide that the maximum length of a restriction on the execution of street works, and the period of notification of a proposed restriction required to be given by the street authority, are to be prescribed in regulations, rather than being fixed periods in the primary legislation. *Subsection (4)* amends section 58(3) to enable regulations to prescribe certain descriptions of persons who must be notified of the proposed restriction.

136. Section 58(4) currently provides that a notice restricting the execution of street works ceases to be effective if the road works to which it relates are not substantially begun on or within one month from the date specified in the notice, or in cases where they are in progress on the specified date in the notice (in the part of the highway to which the restriction relates), within one month from the completion of those works. *Subsection (5)* of this section amends section 58(4) to provide that regulations may prescribe the period after which a notice ceases to be effective (if the works are not substantially begun).

137. Section 58(7) currently provides that the question as to whether the street authority has unreasonably withheld consent to an undertaker to execute works shall be settled by arbitration. *Subsection (7)* amends section 58(7) to provide that disputes shall be decided in the prescribed manner. *Subsection (8)* inserts subsection (7A) into section 58, providing that regulations under section 58(7) may make provide for questions to be settled by arbitration or by a person designated by the Secretary of State.

138. *Subsection (9)* refers to the notices that an undertaker must give an authority before commencing street works, under section 55 of the Act. It provides for different notice periods to be prescribed if the undertaker has been given a notice under section 58(1) relating to restrictions following substantial road works.

Section 52 and Schedule 4: Restriction on works following substantial street works

139. *Section 52* inserts a new section 58A into NRSWA, and refers to Schedule 4 of the Act, which inserts a new Schedule 3A into NRSWA. These provisions confer a new power for a street authority to impose a restriction following substantial street works carried out by undertakers. Substantial street works may be prescribed in regulations. It is similar to the corresponding provision in section 58 of NRSWA (restriction on works following substantial road works).

140. Paragraph 1 of Schedule 3A provides that the Schedule applies where an authority receive a notice under sections 54 or 55 of NRSWA from an undertaker notifying them of proposed substantial street works.

141. Paragraph 2 enables a street authority to publish a notice informing undertakers that substantial street works will take place and that they intend to impose a restriction. Regulations may provide for how the notice is to be published and its form and content. This paragraph also lists the various persons who should be given a copy of the notice – those

listed under section 58 and any other person of a prescribed description. The published notice requires undertakers to notify the street authority within the period specified in the notice, which may not be less than a period to be prescribed in regulations, if they wish to carry out works. This period is referred to as the "notice period". Regulations may also prescribe the form of the notice required to be given by undertakers. The notices required to be given by undertakers under section 55 are not required if they have to give this other type of notice.

142. Paragraph 3 sets out the power of the street authority to make directions to the following undertakers once the notice period has expired:

- the undertaker proposing the substantial works;
- undertakers who have given a notice in response to the authorities' notice;
- any other undertakers who have previously given notice of their works.

143. The street authority's directions can be given in respect of the date on which he may begin to execute the works proposed by him. Where an undertaker has received a direction and begins works before the directed date he is guilty of a level 5 offence. Once the notice period specified has expired paragraph 3(4) makes it a level 5 offence for any other undertaker to carry out works before the undertakers directed by the authority. Paragraph 3(5) excludes emergency works and other cases that may be prescribed from the scope of this offence.

144. Paragraph 4 confers a power on the authority to make a direction restricting further works. The direction must be made by the authority after the expiry of the notice period and before the completion of the works carried out as a result of the directions under paragraph 3. The procedure for giving directions and their form and content may be prescribed by regulations. The paragraph also provides that regulations may prescribe the maximum period of the duration of the restriction.

145. Paragraph 5 has the same effect as the provisions in section 58 which provide that certain categories of work may be carried out whilst the restriction is in place. It also provides for regulations to prescribe the process for settling disputes concerning the giving of consent for such works.

146. The remainder of *section 52* makes consequential amendments to provisions in NRSWA, so as to provide that the giving by an undertaker of a notice under paragraph 2 of Schedule 3A in relation to street works that they propose to carry out, has similar consequences to the giving of a section 55 notice.

Section 53: Notices requiring remedial works relating to reinstatements

147. At present, sections 72 and 90 of NRSWA provide that where an undertaker carries out works which involve breaking open streets, sewers, drains or tunnels, but fails to reinstate the street properly afterwards, the relevant authority (for instance the street authority) can require them to rectify the failure within a period of not less than 7 working days from the date of the notice. *Section 53* amends sections 72 and 90 to replace the 7 day period, and to provide that the minimum period within which the street authority can require the undertaker to rectify the failure (from the date of the notice) may be prescribed in regulations, and that cases may be prescribed in which no minimum applies.

Section 54: Duty to notify street authority of reinstatement

148. Under section 70(3) of NRSWA the undertaker must inform an authority before the end of the next working day after the day on which the reinstatement is completed, that the reinstatement has been carried out. The reinstatement may be permanent or interim but if interim, it must be made permanent within six months. *Section 54* amends the time period for giving the notice required by section 70(3) to provide that the undertaker has up to seven working days from the completion of the reinstatement to notify the authority that the reinstatement has been carried out. The section also enables regulations to require other prescribed information about the reinstatement to be provided. *Subsection (3)* also inserts a new subsection (4A) into section 70 of NRSWA, which provides that where an undertaker carries out an permanent reinstatement after the interim one he must also give a further notice within seven working days from the date on which the permanent reinstatement was completed, giving such other information about the reinstatement as may be prescribed.

149. The new subsection (4B) inserted by *subsection (3)* provides that the time period for notifying both permanent and interim reinstatements, and the maximum period for completion of a permanent reinstatement from the time of an interim reinstatement may be modified by regulations.

Section 55: Power of street authority to require undertaker to re-surface street

150. *Section 55* inserts new sections 73A, 73B and 73C into NRSWA to enable a street authority, in certain circumstances, to require an undertaker to resurface a street.

151. *Section 73A* provides for a "re-surfacing notice" to be given by the authority to the undertaker specifying the resurfacing work they require the undertaker to carry out. A re-surfacing notice could be given when an undertaker:

- has given notice under section 54 or 55 of NRSWA, or under paragraph 2(1)(d) of Schedule 3A of that Act, to carry out street works that will involve the breaking up of any part of the street,
- is executing street works which involve the breaking up of any part of the street at the time the notice is given, or
- has previously carried out street works in that street which involved the breaking up of any part of the street (there is provision to prescribe how far back in time this could be applied but any period is permitted unless one is prescribed).

152. The works in respect of which a re-surfacing notice may be given are limited to works carried out from the time of commencement of this section. Undertakers will be subject to the provisions from that time irrespective of whether or not any regulations have been made by the Secretary of State (in England) or the National Assembly for Wales (in Wales), under the accompanying provisions.

153. *Section 73A(4)* enables a resurfacing notice to relieve the undertaker of some or all of his duties under section 70 of NRSWA with regard to reinstatement of the surface of the street. Regulations may restrict the extent to which the duty may be relieved. *Section 73A(5)* enables resurfacing notices to be varied or withdrawn.

154. Section 73A(6) provides that a street authority may serve a resurfacing notice notwithstanding that the authority (in any capacity) are under a duty to undertake any of the works specified in the notice.

155. Section 73B deals with the timing of resurfacing works. It enables the authority to specify in a "re-surfacing notice" times, stages and dates for beginning, executing and completing works. Regulations may restrict the use of this power, in some or all cases, including any requirement to consult an undertaker before imposing a restriction.

156. Section 73C provides that the new road surface must conform to any prescribed standards for the materials and workmanship as well as any performance standards for a prescribed period after resurfacing.

Section 56: Re-surfacing: regulations and guidance

157. Section 56 inserts sections 73D and 73E into NRSWA.

158. Section 73D provides for regulations supplementing sections 73A-73C. In particular, these may provide for the following:

- information for resurfacing notices;
- deciding which undertaker should be served with the notice;
- notification of prescribed events by undertakers;
- prescribe circumstances in which an undertaker is entitled to pay a sum to the street authority instead of executing the works specified in a re-surfacing notice, and make provision about the manner in which such sums are to be calculated;
- rights of review or appeal against a notice or any requirement contained in it;
- determination of disputes;
- application of any other provisions in Part 3 of NRSWA or in the Highways Act 1980 to resurfacing works;
- relieving other undertakers of some or all of their duties under section 70 of NRSWA with regard to reinstatement of the surface of the street.

159. Section 73D(4) enables offences to be created by regulations.

160. Section 73E provides for the Secretary of State to issue a code of practice giving practical guidance on the matters in sections 73A-73D and on regulations made under those sections.

Section 57: Contributions to costs of re-surfacing by undertaker

161. Section 57 inserts a new section 78A into NRSWA which deals with the contributions to costs in relation to resurfacing work by undertakers. It provides for street authorities to pay contributions to the undertaker carrying out the resurfacing as well as for contributions from other undertakers who have carried out reinstatements in that part of the street. It also provides for those other undertakers to pay contributions to the street authority if the undertaker served with a re-surfacing notice elects instead to make a payment to the authority, which then carries out the work. In either case, contributions may only be sought from undertakers who carry out works after the commencement of this section. Undertakers

will be subject to the provisions from that time, irrespective of whether or not any regulations have been made by the Secretary of State (in England) or the National Assembly for Wales (in Wales) under this section.

162. The section enables regulations to set out:

- how the contributions to the costs of re-surfacing are calculated;
- the method of payment (including provision for the manner of payment and payment by instalments);
- the period from which payments are required to be made;
- how undertakers are to be informed by the street authority that they are required to make a contribution to the costs of re-surfacing;
- the extent to which the street authority is required to make up any contributions that cannot be recovered as a result of the insolvency of an undertaker;
- requirements that disputes of a prescribed description are to be determined in such a manner and by such persons as provided for in the regulations; and
- provisions to deal with cases where an undertaker has already made, or is liable to make, a payment to the authority under section 78 of NRSWA (contributions to making good the cost of long-term damage).

Section 58: Inspection fees

163. *Section 58* widens the regulation making powers of the Secretary of State in relation to the setting of fees for the inspection of utilities' works. *Section 72(2)* of NRSWA provides for the circumstances where a street authority inspects an undertaker's work and finds that the undertaker has failed to carry out his duty to properly reinstate the street. In these circumstances, the undertaker is required to meet the cost of three inspections: a joint inspection with the authority to see what action is needed to remedy the fault, an inspection during the 'remedial' works and another at their completion.

164. *Subsection (1)* adds new subsections (2A) and (2B) to *section 72* of NRSWA, which allow the Secretary of State to prescribe a fee for each of the three types of inspections. If he does so, the undertaker is obliged to pay the prescribed fee rather than the cost of the inspection. The fee may vary according to the nature of the inspection required, how extensive it is, the place where it is carried out, or any other factor that appears relevant to the Secretary of State.

165. *Subsection (2)* substitutes a new *section 75* of NRSWA, widening the scope of the Secretary of State's regulation making power. The new *section 75(3)* will enable the regulations to differentiate between different descriptions of street authority and undertaker. It also allows for different provision to be made according to their previous performance. Regulations can prescribe how and over what period an undertaker's previous performance would be assessed. The new *section 75(5)* enables regulations to prescribe the disputes which are required to be settled by arbitration.

Section 59: Guidance about inspections

166. NRSWA provides that an undertaker who carries out street works must pay a street authority a fee in respect of certain inspections of the works. It also provides for a street

authority to carry out such investigatory works as appear to them to be necessary to ascertain whether the undertaker has complied with his duties with respect to reinstatement. *Section 59* inserts a new section 73F into NRSWA. Section 73F (guidance about street authority inspections) provides for the Secretary of State to issue or approve guidance to street authorities exercising their powers to inspect works. Section 73F(2) provides that an authority must have regard to the guidance in carrying out any such inspections. Section 73F(3) clarifies that guidance on the carrying out of investigatory works may be provided under the umbrella of guidance on inspections generally.

Part 5: Highways and Roads

167. In this Part, the regulation making powers referred to in the Highways Act 1980 are exercised by the Secretary of State (in England), and by the National Assembly for Wales (in Wales). References in this Part to the power to make regulations should be read accordingly.

Section 60: Strategic Roads in London: initial designation by Secretary of State

168. *Section 60* provides that the Secretary of State may by order made by statutory instrument designate roads and proposed roads in Greater London as strategic roads, other than roads for which the Secretary of State or Transport for London is the traffic authority. A strategic road is a road in respect of which the powers in section 301A of the Highways Act 1980, and section 121B of the Road Traffic Regulation Act 1984 may be exercised (as those sections are amended by sections 62 and 63).

169. *Subsection (2)* provides that any road or proposed road so designated shall become a strategic road from the date specified in the order. *Subsection (3)* provides that no order under the section may be made in respect of a road or proposed road in a London borough if an order under that subsection has been made in respect of any other road or proposed road in that borough. This means that the Secretary of State is able, if he thinks fit, to designate the strategic roads in separate orders for individual boroughs or groups of boroughs, but cannot revisit a designation in relation to a borough.

Section 61: Orders of the Greater London Authority changing what are strategic roads

170. *Section 61* enables changes to be made to the network of strategic roads in London. *Subsection (1)* provides that if the Mayor of London considers it expedient, the Greater London Authority may by order direct that a road or a proposed road should become a strategic road. *Subsection (3)* provides that an order under *subsection (1)* will not have effect unless the consent of the council for the London borough in which the road or proposed road is situated is obtained or where it is not obtained the order is confirmed by the Secretary of State. *Subsection (4)* enables the Greater London Authority by order to direct that a road shall cease to be a strategic road. The Greater London Authority may act through the Mayor of London.

Section 62: London borough councils exercising powers under Highways Act 1980 so as to affect strategic roads

171. *Section 62* amends section 301A of the Highways Act 1980. That section currently provides that a London borough council proposing to carry out highway work which will affect or is likely to affect a GLA road or a road in another London borough must notify TfL and, where the road is in another borough, the council of that borough as well. TfL or another borough may object to the borough undertaking the work. Where TfL or another borough

objects, the GLA can give consent to the work after consideration of the objection. This section amends section 301A so that its provisions apply to strategic roads as they apply to GLA roads and roads in another London borough.

Section 63: London borough council exercising powers under Road Traffic Regulation Act 1984 so as to affect strategic roads

172. *Section 63* amends section 121B of the Road Traffic Regulation Act 1984. That section currently provides that a London borough council proposing to exercise road traffic powers which affect a GLA road or a road in another London borough must notify TfL and, where the road is in another borough, the council of that borough as well. TfL or another borough may object to the borough exercising the power. Where TfL or another borough objects, the GLA can give consent to the work after consideration of the objection. This section amends section 121B so that its provisions apply to strategic roads as they apply to GLA roads and roads in another London borough.

Section 64 and Schedules 5 and 6: Fixed penalty offences under the Highways Act 1980

173. *Section 64* provides for fixed penalties for certain offences under the Highways Act 1980. The potential offences are listed at Schedule 5 to the Act, which inserts a new Schedule 22A to the Highways Act 1980. To be a fixed penalty offence, it must also be prescribed by the Secretary of State in regulations. The regulations may make provision for Greater London different from that in the rest of England. The details of how the system will operate are contained in Schedule 6 to the Act, which inserts a new Schedule 22B into the Highways Act 1980. The new Schedule 22B, among other things, enables regulations to make different provision for different purposes or areas, including with respect to the level of penalty. *Section 64* also makes amendments to the London Local Authorities and Transport for London Act 2003. These provide that where London borough councils or Transport for London set the level of penalty for specific fixed penalty offences in the 2003 Act, the Secretary of State can make further regulations increasing the level of those penalties, in cases where the offences are also fixed penalty offences by virtue of this Act.

Section 65: Duty of local highway authority to keep records of objects in highway

174. *Section 65* enables the Secretary of State (in England), or the National Assembly for Wales (in Wales), to make regulations imposing a duty upon a local highway authority to make and keep a record of the location of any object of a description prescribed in the regulations which is placed by that authority in the street. The regulations may also make provision as to the form of the records, and supplementary information to be included in the record, and may require a authorities to make their records available for inspection.

Section 66: Builders' skips: charge for occupation of the highway for unreasonable period

175. Sections 139 and 140 of the Highways Act 1980 set out arrangements for controlling the placing and removal of builders' skips in the highway.

176. Section 74 of NRSWA enables the Secretary of State to make regulations imposing a charge on undertakers where street works in a maintainable highway overrun a reasonable period. Section 74 was amended (by section 256 of the Transport Act 2000) so as to widen the regulation making power (in particular as regards the service of notices).

177. Schedule 8 to the NRSWA amended the Highways Act 1980 to insert section 140A of the Highways Act 1980. Section 140A has not been brought into force. Section 140A makes provision for similar arrangements to be made in respect of builders' skips as are provided in respect of street works under section 74 of the NRSWA (prior to its amendment by the Transport Act 2000).

178. *Section 66* substitutes a new section 140A into the Highways Act 1980, to provide for a widening of the regulation making powers in respect of builders' skips. The new section 140A is reasonably similar to section 74 of NRSWA as amended by the Transport Act 2000.

179. The new section 140A(1) provides that the Secretary of State may make provision by regulations requiring the owner of a builder's skip deposited on a maintainable highway to pay a charge to the highway authority in cases where the period of the occupation of the highway exceeds such period as may be prescribed by the Secretary of State in regulations and a reasonable period.

180. The new section 140A(2) provides that a reasonable period means a period agreed between the owner of the skip and the authority or, if agreement cannot be reached, a period determined by arbitration.

181. The new section 140A(9) enables regulations made under the inserted section to provide that the authority are to set the rate of charge, up to a prescribed maximum, and that different rates of charge may be set according to such factors as the highway authority considers relevant.

182. The new section 140A(15) enables the regulations to make provision in respect of the application by authorities of the sums paid by way of charges, and for the publication and the keeping of accounts of sums paid by way of charges.

183. The new section 140A(16) provides that the regulations may create a level 4 offence (attracting a maximum fine of £2,500) where the relevant person fails to give a notice, or to provide information, in accordance with the regulations.

184. The new section 140A(17) enables the regulations to prescribe that where a skip is the subject of hiring agreement or hire purchase agreement of a type prescribed in the regulations, it is the person in possession of the skip that is subject to the requirements of the regulations.

185. The new section 140A(18) enables the regulations to make provision in relation to the deposit of a series of skips, rather than just a single one.

186. The new section 140A(19) enables the regulations to provide that such a series of skips may be treated as a single skip (for instance if a skip was deposited and then removed several times as it became full up).

Section 67: Builder's skips: charge determined by reference to duration of occupation of the highway

187. Section 74A of NRSWA enables the Secretary of State to make regulations requiring an undertaker executing street works in a maintainable highway to pay to the highway authority a charge, determined in the prescribed manner by the reference to the duration of the works. The regulations made by the Secretary of State under the power enable highway authorities to impose on undertakers a charge for each day of street works ("lane rental" as it is commonly

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known). Lane rental powers were piloted in two local highway authority areas, Middlesbrough and Camden.

188. *Section 67* confers a power, by regulations, to make provision for “lane rental” in relation to the placing of a skip on a maintainable highway.

Section 68: Scaffolding, building materials and excavations: charge for occupation of the highway for unreasonable period

189. *Section 169* of the Highways Act 1980 provides for the control of the erection of scaffolding or similar structures over the highway.

190. *Section 171* provides for the control of the placing of builders' material (e.g. bricks) on the highway or the making of temporary excavations in the street.

191. Schedule 8 to the NRSWA amended the Highways Act 1980 to insert section 171A of the Highways Act 1980. Section 171A has not been brought into force. Section 171A makes provision for similar arrangements to be made in respect of the placing of scaffolding, building materials etc. as are made in respect of street works under section 74 of the NRSWA (before section 74 was amended by the Transport Act 2000).

192. *Section 68* makes the equivalent substitutions to section 171A of the Highways Act 1980, as *section 66* of this Act makes to section 140A of the Highways Act 1980.

Section 69: Scaffolding, building materials and excavations: charge determined by reference to duration of occupation of the highway

193. *Section 69* confers the power, by regulations, to make provision for “lane rental” in relation to the placing of scaffolding, building materials etc. on a maintainable highway.

Section 71: Guidance to local highway authorities as to safety precautions

194. *Section 65* of NRSWA provides that undertakers operating under NRSWA must ensure, among other things, that their works are adequately signed, guarded and lit. The Secretary of State has exercised his power under that section to issue practical guidance to undertakers as to their responsibilities in this respect. *Section 174(1)(a)* and *(1)(b)* of the Highway Act 1980 places similar requirements upon persons executing works in a street (other than persons executing street works). *Section 71* inserts a new power into section 174 of the Highways Act 1980 to enable the Secretary of State to issue guidance to persons and highway authorities in respect of these requirements.

Part 6: Civil Enforcement of Traffic Contraventions

Background

195. Part 6 provides a single framework for the civil enforcement by local authorities of parking and waiting restrictions, bus lane restrictions and some moving traffic offences. This Part, and regulations made under this Part, will, for the most part, replace existing provisions in national and London local legislation. This Part will also enable regulations to be made giving authorities outside London civil enforcement powers to cover some moving traffic offences (such as ignoring the rules at box junctions and banned turns) on the basis of camera evidence or the statement of a civil enforcement officer, and giving additional powers in respect of parking enforcement in areas outside London equivalent to those which already exist in London.

196. Regulation of the movement of traffic on roads is intended to ensure safety and to avoid congestion problems. Regulation also enables specific classes of traffic, such as buses, to be given priority in the allocation of road space. Effective enforcement is required to ensure that the regulation of traffic is effective. Increasingly, because of having to focus on their core responsibilities, the police service is not in a position to give high priority to more minor traffic contraventions, such as parking offences. The notification, adjudication and enforcement of such contraventions by civil (as opposed to criminal) bodies provides an alternative way of dealing with such contraventions.

197. Civil enforcement of traffic regulations by local authorities was first made possible in relation to parking and waiting restrictions under the Road Traffic Act 1991. This resulted in the introduction of decriminalised parking enforcement (DPE) across the whole of London in 1994. Since then over 90 authorities in England and Wales outside London have also been given DPE powers through the designation of their areas as permitted parking and special parking areas under the 1991 Act. Civil enforcement of traffic contraventions has been revised and extended in scope in London through London Local Authority Acts. The London Local Authorities Acts of 1995 and 2000 widened the 1991 Act powers for civil enforcement of parking and waiting restrictions in London. Civil enforcement of bus lanes by London authorities, on the basis of camera evidence of contraventions, was made possible by the London Local Authorities Act 1996. The Transport Act 2000 included powers to enable the appropriate national authority to make regulations to enable the civil enforcement of bus lanes generally across England and Wales. The London Local Authorities and Transport for London Act 2003 includes powers enabling the civil enforcement of certain moving traffic contraventions by London authorities.

Specific provision for Wales and for London

198. The provisions of the Road Traffic Act 1991 which first introduced DPE were first laid before Parliament in a form which applied only to London. Since that Act was passed, London has taken the lead in civil enforcement both in terms of the volume of enforcement and (further to local legislation) in terms of the number and type of contraventions enforceable and the manner of their enforcement. Given the established and integrated mechanisms, functions and procedures in this area which the London boroughs, Transport for London, and the Mayor already have, separate provision for London is made throughout Part 6.

199. In respect of Wales, the Secretary of State's power to make an order establishing an area for DPE under the Road Traffic Act 1991 has been transferred to the National Assembly for Wales; and under the Transport Act 2000, the regulation-making powers establishing the civil enforcement of bus lanes have similarly been conferred on the Assembly. Following this precedent, Part 6 consistently provides for regulation and order making powers to be conferred on the National Assembly for Wales, in respect of Wales.

Section 72: Civil penalties for road traffic contraventions

200. *Section 72* enables the appropriate national authority (the Secretary of State in respect of England and the National Assembly for Wales in respect of Wales) to make regulations for the imposition and payment of penalty charges for traffic contraventions that are subject to civil enforcement and which are committed within an area that is designated as a civil enforcement area for the purpose of enforcing those contraventions. The regulations must

specify the person or (as is expected will be the case in respect of the London lorry ban) the persons liable for payment of the penalty charge. They must also ensure either that that person (or those persons) will not be exposed to criminal proceedings for an act which is subject to civil enforcement, or that any civil enforcement penalty will be cancelled or refunded if criminal proceedings have been or are instituted. Regulations under this section may specify exemptions from penalty charges, discounts and surcharges. The regulations may require certain penalty charges to be imposed only on the basis of a record produced by an approved device or a statement made by a civil enforcement officer appointed by an enforcement authority.

Section 73 and Schedule 7: Contraventions subject to civil enforcement

201. *Section 73* and Parts 1 to 4 of *Schedule 7* set out the contraventions which are subject to civil enforcement. These are contraventions of parking and waiting restrictions (Part 1), orders establishing bus lanes (Part 2), specified moving traffic offences (Part 4) and the London lorry ban (Part 3). The appropriate national authority can make regulations adding to the lists of parking contraventions and moving traffic contraventions. Contraventions which would lead to obligatory licence endorsement may not be added to the list of moving traffic contraventions. *subsection (4)* enables the appropriate national authority to amend *Schedule 7* to reflect future changes to secondary legislation in that Schedule.

Section 74 and Schedule 8: Civil enforcement areas

202. *Section 74* and *Schedule 8* establish (and enable the establishment of) geographical areas in which there will be civil enforcement for one or more classes of contravention that are subject to civil enforcement. These provisions also identify the enforcement authority for such areas. Part 1 of *Schedule 8* covers enforcement in London and Part 2 enforcement outside London. All areas where decriminalised parking enforcement has been introduced under the Road Traffic Act 1991 will become civil enforcement areas for parking contraventions.

203. The whole of Greater London will be a civil enforcement area for parking contraventions within paragraph 2 of *Schedule 7* (contraventions relating to parking places). The whole of London will also be a civil enforcement area for bus lane contraventions and for London lorry ban contraventions. A London local authority or Transport for London may declare its own area to be a civil enforcement area for moving traffic contraventions, and the Secretary of State may make an order, on the application of a London local authority, designating all or part of that authority's area to be a civil enforcement area for parking contraventions within paragraph 3 of *Schedule 7*. Outside London the appropriate national authority will be able by order to designate additional local authority areas as civil enforcement areas for enforcement in respect of parking or (in existing civil enforcement areas for parking) bus lane or moving traffic contraventions.

Section 75: Power to require authority to apply for civil enforcement powers

204. *Section 75* confers on the appropriate national authority a power to give notice to a local authority outside Greater London requiring the authority to apply under paragraph 8 of *Schedule 8* for designation of the whole or part of its area as a civil enforcement area for parking contraventions. Such a notice must be preceded by a notification to the authority and the appropriate chief officer of police that the giving of such a notice is being contemplated to enable them to make representations to the national authority. The national authority must

take such representations into account in deciding whether to give a notice to apply. The terms of a notice to apply may subsequently be modified by agreement between the national authority and the local authority.

Section 76: Civil enforcement officers

205. *Section 76* enables the appointment of civil enforcement officers by authorities undertaking the civil enforcement of traffic contraventions. It provides that a parking attendant appointed under section 63A of the Road Traffic Regulation Act 1984 is a civil enforcement officer in relation to parking contraventions and may also be appointed as a civil enforcement officer in relation to other road traffic contraventions subject to civil enforcement in the area of the local authority concerned.

Section 77 and Schedule 9: Setting the level of penalty charges

206. *Section 77* provides that the level of penalty charges for traffic contraventions (including discounts or surcharges to encourage payment), charges for the removal, storage and disposal of unlawfully parked vehicles, or charges for the release from an immobilisation device shall be set in accordance with the arrangements detailed in *Schedule 9*. Part 2 of that Schedule provides for charges in London to be set by London local authorities and Transport for London and submitted to the Mayor for his approval. If Transport for London or the London local authorities fail to set the charges, or if the Mayor does not approve the levels of charges set by the London local authorities, the charges are set by the Mayor. The Schedule gives the Secretary of State a reserve power to intervene if he thinks any or all of the charges approved or set by the Mayor are excessive, and it enables him by regulations to set the level of charges. Part 3 of the Schedule provides for charges outside London to be set by each enforcement authority taking account of guidelines set out in an order made by the appropriate national authority.

Section 78: Notification of penalty charges

207. *Section 78* enables regulations to be made by the Lord Chancellor for the notification of penalty charges in relation to traffic contraventions subject to civil enforcement. In the case of a parking contravention the regulations may provide for the penalty charge notice to be fixed to the vehicle, given to the person appearing to be in charge of it, or given in some other manner as prescribed, for example by post. Notification of a penalty charge in respect of traffic contraventions involving moving vehicles may be given in such manner as may be prescribed; however, regulations made under this section may not confer a power to stop vehicles.

208. The regulations may create criminal offences. For example, regulations are expected to create an offence of unauthorised interference with a penalty charge notice fixed to a vehicle, which is expected will be punishable by a fine not exceeding level 2 on the standard scale (i.e. a maximum fine of £500). The regulations are also expected to enable a local authority to require by notice an operator of goods vehicles to provide the name and address of the person whose driving contravened the London lorry ban (thus replicating the effect of section 5 of the London Local Authorities and Transport for London Act 2003). It is expected the regulations will make the giving of false information in respect of such a notice to be punishable by a fine not exceeding level 5 on the standard scale (i.e. a maximum fine of £5,000).

Section 79: Immobilisation of vehicle where penalty charge is payable

209. Immobilisation of vehicles using wheel clamps is an additional measure used by some enforcement authorities to deter illegal parking. *Section 79* provides for regulations to be made for or in connection with the immobilisation of unlawfully parked vehicles, and with the release of such vehicles on payment of the penalty charge imposed for it being unlawfully parked, a release fee, and any unpaid penalty charges previously incurred by the vehicle. The regulations may provide for a notice to be fixed to the vehicle warning that it has been immobilised, and explaining both how to secure its release and that the notice should not be interfered with except under the authority of the owner or person in charge of the vehicle or the enforcement authority. Regulations may also provide that a vehicle may only be released under the direction of a person authorised by the enforcement authority and that any unauthorised attempt to release a vehicle shall be an offence punishable by a fine not exceeding level 3 on the standard scale (i.e. a maximum of £1,000).

210. The regulations must provide that a vehicle in a parking place shall not be immobilised for a failure to pay a parking charge, to display a ticket showing that a charge has been paid or to remove a vehicle at the end of a period of paid for parking until 15 minutes after the issue of a penalty charge notice. The regulations shall also provide that a vehicle must not be immobilised if it displays a disabled person's badge (a "blue badge"). However, the regulations will make it an offence, punishable by a fine not exceeding level 3 on the standard scale, if a person inappropriately uses a blue badge and as a result the vehicle in question is not immobilised.

Section 80: Representations and appeals

211. *Section 80* enables regulations to be made entitling a person liable for payment of a penalty charge or who secures the release of a vehicle from an immobilisation device to make representations to the enforcement authority and to appeal to an independent adjudicator if his representations are not accepted. The regulations may require these rights to be notified to the appropriate person when a penalty charge is issued or when the vehicle concerned is released from an immobilisation device. The regulations may make provision in relation to representations and appeals, including as to the circumstances in which there is a right of appeal to an adjudicator. By virtue of *subsection (3)*, regulations may provide grounds for appeal in respect of which an adjudicator's function will be to consider whether to direct an enforcement authority to consider or reconsider representations.

212. The regulations may make it an offence not to attend a hearing before an adjudicator or to fail to provide certain documents, and these offences will be punishable by a fine not exceeding level 2 on the standard scale (i.e. a maximum of £500). Similarly, the regulations may make it an offence to deliberately or recklessly make false representations in respect of penalty charges, which offence will be punishable by a fine not exceeding level 5 on the standard scale (i.e. a maximum of £5,000). Regulations may authorise an adjudicator to award costs against a party to an adjudication in such circumstances as may be specified. Regulations under this section require approval by a resolution of each House of Parliament, further to *subsection (5)* of *section 89*.

Section 81: Adjudicators

213. The European Convention on Human Rights (as incorporated in domestic law by the Human Rights Act 1998) requires adjudication of a penalty charge to be by an independent

and impartial tribunal. *Section 81* enables the Lord Chancellor to make regulations to provide for the appointment of adjudicators to hear appeals by persons who are or may be liable to pay penalty charges for traffic contraventions. It specifies the legal qualifications of adjudicators and limits the grounds for removal from office of an adjudicator. The regulations will provide for the consent of the Lord Chancellor to be obtained prior to the appointment, re-appointment or removal from office of an adjudicator. Enforcement authorities will be responsible for providing accommodation and administrative support for adjudicators, and setting their terms of work and for their remuneration. Adjudicators will be required by regulations to make an annual report to the enforcement authorities and those authorities in turn will be required to make an annual report to the appropriate national authority on the discharge by the adjudicators of their functions.

214. The regulations relating to the appointment of adjudicators may make transitional provisions treating adjudicators already appointed for the purpose of hearing appeals, in the case of parking under section 73 of the Road Traffic Act 1991 or in the case of bus lane contraventions under section 144 of the Transport Act 2000, as if they had been appointed under the Act. Such regulations may also continue in force existing arrangements for their accommodation, administrative support and fees. In practice this will mean adjudication continuing to be undertaken by bodies corresponding to the London Parking and Traffic Appeals Service, in London, and the National Parking Adjudication Service, outside London. Both were originally constituted as adjudication bodies for the purpose of decriminalised parking enforcement.

Section 82: Enforcement of penalty charges

215. It is necessary to have the ability to enforce payment of penalty charges and *section 82* enables regulations to be made by the Lord Chancellor for this purpose. The first step to induce payment will be the imposition of a surcharge on the original penalty. If this does not secure payment then an enforcement model (which is expected substantially to replicate by regulations the procedure under the Road Traffic Act 1991) will be followed. The procedure is for unpaid penalty charges to be registered at the Traffic Enforcement Centre (TEC) – part of the Northampton County Court – and enforced as a county court debt if the TEC so orders. The regulations are expected to provide that if no payment is made, and no statutory declaration disclaiming responsibility is received, the enforcement authority may seek to enforce payment by execution by a certificated bailiff.

216. The regulations may create an offence, punishable by a fine not exceeding level 5 on the standard scale (i.e. a maximum of £5,000), and it is expected that regulations will create an offence of making a false statutory declaration to avoid enforcement. Provision is made for continuing in force existing provisions in respect of parking fines incurred under the 1991 Act and regulations in connection with the execution of warrants of execution by bailiffs.

Section 83: Certificated bailiffs

217. Section 83 re-enacts in substance the provisions of section 78 of the Road Traffic Act 1991. It provides for the Lord Chancellor to make regulations which will control the certification of bailiffs and the execution of warrants by bailiffs. Regulations in respect of bailiffs currently in existence by virtue of section 78 will continue in force under this section.

Section 84 and Schedule 10: Designation of special enforcement areas

218. *Section 84* and *Schedule 10*, paragraph 1, enable the Secretary of State, on the application of a London local authority or Transport for London to designate the whole or part of its area as a special enforcement area (SEA) provided it is within or co-extensive with a civil enforcement area for parking contraventions designated under paragraph 2 of *Schedule 8*. An order made by the Secretary of State designating a special parking area in London under *section 76* of the Road Traffic Act 1991 will have effect as an order made under *Schedule 10* designating the area as a SEA. However, the nature of any such area will change to become an area in which forms of conduct are specified as contraventions peculiar to that area (as per the approach of the 1991 Act) but (unlike the approach of the 1991 Act) not an area in which, by definition, there will be civil enforcement of those or other contraventions.

219. Paragraph 2 of *Schedule 10* preserves the ability of the Mayor of London under *section 76A* of the Road Traffic Act 1991 to vary an order designating a SEA with the consent of the relevant London authority for every road that may be added or removed from the area. The relevant London authority is, as regards GLA roads, Transport for London, and as regards roads other than GLA roads, the London local authority in whose area the road is situated. Orders made by the Mayor under *section 76A(1)* or *(3)(a)* of the Road Traffic Act 1991 prior to the coming into force of this Section shall have effect as if made under paragraph 2 of *Schedule 10*.

220. Paragraph 3 of *Schedule 10* enables the appropriate national authority to designate SEAs outside Greater London on the application of an authority specified in paragraph 3(3). An order designating a special parking area outside Greater London made under paragraph 2(1) of *Schedule 3* to the Road Traffic Act 1991 will continue to have effect as an order made under paragraph 3 of *Schedule 10* designating the area as an SEA.

Section 85: Prohibition of double parking etc.

221. Parking a vehicle adjacent to another parked vehicle or at some distance away from the kerbside has the potential to obstruct the flow of other traffic. Within an SEA, *section 85* makes parking a vehicle such that no part of it is within 50 centimetres of the edge of the carriageway a traffic contravention for which a penalty charge may be issued. A number of exceptions are set out in *subsections (2) to (5)*, e.g. for the emergency services and for loading and unloading in certain circumstances. There is no contravention if, for example, a vehicle is prevented from proceeding due to circumstances beyond the driver's control.

Section 86: Prohibition of parking at dropped footways etc.

222. Dropping the level of a footway, cycle track or verge to the level of the carriageway assists pedestrians crossing a road, cyclists entering or leaving the carriageway and vehicles crossing a footway, cycle track or verge in order to access off-road parking. Raising the level of the carriageway to meet the level of a footway, cycle track or verge similarly provides such assistance. *Section 86* makes it a contravention for which a penalty charge may be issued to park a vehicle within a SEA and adjacent to either a dropped footway, cycle track or verge, or where the carriageway is raised to assist pedestrians, cyclists or vehicles. A number of exceptions are set out in *subsections (2) to (6)*, e.g. for the emergency services and for loading and unloading in certain circumstances. There is no contravention if, for example, a vehicle is prevented from proceeding due to circumstances beyond the control of the driver.

Section 87: Guidance to local authorities

223. *Section 87* enables the appropriate national authority to publish guidance to local authorities about any matter relating to the civil traffic enforcement functions which may be conferred on them by Part 6. In exercising those functions authorities must have regard to any such guidance.

Section 88: Financial provisions

224. *Section 88* provides for regulations to be made for the keeping of accounts in respect of the income and expenditure from each form of civil enforcement. *Section 55* of the Road Traffic Regulation Act 1984 (which is amended by *section 95* of this Act) provides for how surpluses generated in respect of parking charges may be applied.

Section 90: Application to Crown and visiting forces

225. *Section 90* provides that Part 6 does not apply to vehicles being used for national naval, military or airforce purposes or vehicles similarly being used by visiting forces, but that they do apply to registered vehicles being used in the public service of the Crown and vehicles driven by persons in the public service of the Crown. Part 6 does not enable civil enforcement of traffic contraventions on Crown roads unless an order to that effect has been made. *Section 131* of the Road Traffic Regulation Act 1984 enables the Secretary of State, with the consent of the appropriate Crown authority, to direct by order that a road traffic enactment (which definition includes the Traffic Management Act) shall apply to Crown roads.

Section 91 and Schedule 11: Consequential amendments

226. Regulations under Part 6 will replace existing provisions contained in the Road Traffic Act 1991, the Transport Act 2000 and various London Local Authorities Acts. *Section 91* and *Schedule 11* to the Act make consequential amendments to existing legislation.

Part 7: Miscellaneous and General

Section 94: Power to inspect blue badges

227. *Section 94* amends *section 21* of the Chronically Sick and Disabled Persons Act 1970 which established the disabled persons parking badge scheme (“the Blue Badge Scheme”). The scheme provides certain parking concessions for disabled people. The effect of the provisions introduced by *section 94* is that police, traffic wardens, local authority parking attendants and civil enforcement officers will have the power to require blue badges issued under the scheme to be produced for inspection. Apart from the police, these bodies only have this power when carrying out their other parking enforcement functions.

228. *Section 94* requires anyone in the vehicle, or anyone who appears to the enforcement officer to have been, or to be about to get into a vehicle displaying a disabled person’s parking badge, to produce it for inspection. It creates an offence of failing without reasonable excuse to produce a badge when required to do so by any of the authorised persons. On conviction the offence is punishable by a fine not exceeding level 3 (£1,000) on the standard scale.

Section 95: Application of surplus income from parking places

229. Use of surplus income from parking charges and penalty charges is governed by *section 55* of the Road Traffic Regulation Act 1984. Once the need for provision of off-street parking facilities and to make good deficits to central funding has been met, use of surpluses

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is currently confined to the provision of public transport services or to road improvements. *Section 95* amends *section 55* to add to that list the additional purpose of using surplus income to fund local environmental improvements. “Environmental improvement” is defined in a broad sense to encompass recreational or scenic improvements. It also amends *section 55* to enable the appropriate national authority to make regulations specifying classes or descriptions of authorities, or particular authorities (for example those which may be designated under *section 99* of the Local Government Act 2003 as high-performing authorities), as having complete freedom in the way they spend surplus parking income once the needs of parking provision have been considered.

Section 96: Wales

230. *Section 96* provides that references in *Schedule 1* to the National Assembly for Wales (Transfer of Functions) Order 1999, to the Highways Act 1980, the Road Traffic Regulation Act 1984 and the New Roads and Street Works Act 1991, are to be read as references to those Acts as amended by the Act. The Order provides for the transfer of the certain functions to the National Assembly for Wales.

Section 97: Financial provision

231. *Section 97* makes provision for money to be provided by Parliament to meet costs attributable to the Act. *Subsection (1)(a)* provides statutory authority for the costs of setting up the traffic officer service and establishing regional control centres and traffic information systems.

Section 98 and Schedule 12: Repeals

232. *Section 98* and *Schedule 12* provide for repeals of existing legislation. Those repeals in *Part 1* of *Schedule 12* will be consequent on the making of regulations under *Part 6* of the Act.

Section 99: Commencement

233. *Section 99* provides for the Secretary of State (in England) or the National Assembly for Wales (in Wales) to commence the provisions in this Act by order, providing for different provisions to be commenced on different dates and for *Part 6* and related appeals to be commenced on different dates for different areas (e.g. London as opposed to the rest of England). The section also provides that the Secretary of State (in England) or the National Assembly for Wales (in Wales), may by order make transitional provision or savings in connection with the coming into force of any provisions in this Act.

HANSARD REFERENCES

234. The following table sets out the dates and Hansard references for each stage of this Act's passage through Parliament.

*These notes refer to the Traffic Management Act 2004 (c18)
which received Royal Assent on 22 July 2004.*

Stage	Date	Hansard references
<i>HOUSE OF COMMONS</i>		
Introduction	11 December 2003	Vol 415 Col 1224
Second Reading	5 January 2004	Vol 416 Col 35 - 129
Committee	27 January 2004 29 January 2004 3 February 2004 5 February 2004 10 February 2004	Hansard Standing Committee A
Report and Third Reading	16 March 2004	Vol 419 Col 175 - 264
<i>HOUSE OF LORDS</i>		
First Reading	17 March 2004	Vol 659 Col 272
Second Reading	1 April 2004	Vol 659 Col 1530 - 1562
Grand Committee	22 April 2004 27 April 2004 29 April 2004 4 May 2004	Vol 660 Col GC 1 - GC 58 Vol 660 Col GC 59 - GC 120 Vol 660 Col GC121 - GC 178 Vol 660 Col GC 179 - GC 236
Report	29 June 2004	Vol 663 Col 139 - 209
Third Reading	8 July 2004	Vol 663 Col 946 - 988
<i>HOUSE OF COMMONS</i>		
Commons Consideration of Lords Amendments	15 July 2004	Vol 423 Col 1580 - 1632
<i>HOUSE OF LORDS</i>		
Lords Consideration of Commons Reasons and Amendments	20 July 2004	Vol 664 Col 127 - 135

Royal Assent – 22 July 2004

House of Lords Hansard Vol 664 Col 333
House of Commons Hansard Vol 424 Col 514

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