Dear Howard

PROPOSED NEW MERSEY CROSSING - APPLICATIONS, PROCEDURE AND TIMETABLE

Thank you for your letter of 6 August to Andrew Viner. This reply has been a little delayed due to the summer holiday period.

Your letter helpfully sets out a range of issues relating to the statutory processes for the proposed New Mersey Crossing. The comments below reflect responses that I have received from colleagues here.

Powers required

Transport and Works Act 1992 ("TWA")

It has been established that it may be appropriate for the construction of the bridge works to be the subject of an application to the Secretary of State for an order under the TWA. In accepting such an application, however, the Secretary of State would need to be satisfied that the objects of the proposed order could not be achieved by other means. In our view, an order made under the TWA to authorise the carrying out of works for which other - more appropriate - powers were available would be extremely vulnerable to a successful challenge in the courts.

In coming to a view on the appropriateness of a TWA application in this case, and having regard to sub-section 13(2) of the Act, the Secretary of State will take into account the possibility that particular powers are required which can only be granted in a TWA order. It is noted, for example, that there may be a desire to amend or dis-apply the statutory powers of the Mersey Conservator, and possibly of other statutory bodies with an interest in the River Mersey and the other waterways. We would need to give careful consideration to whether such powers could be overridden in this way and, if so, whether this could properly be achieved under TWA powers. In order that this matter can be pursued it would be helpful if you could explain, by reference to relevant legislation, which powers the promoters of the scheme would seek to amend or dis-apply.

Planning permission
An application to the Secretary of State for Transport for a TWA order may carry with it an application to him for deemed planning permission limited to works authorised by the order. In all other respects, questions about the grant of planning permission should, in the first instance, be directed to the local planning authority.

Compulsory acquisition

Compulsory powers for the acquisition of land necessary to carry out the works authorised by a TWA order, may be included in the order. However, careful consideration should be given to the wisdom of separating these from the compulsory powers required for the rest of the scheme.

Power to levy tolls

It is important not to confuse terminology here. 'Tolls' are paid for the use of a specific piece of infrastructure - generally a bridge or a tunnel - whose construction is authorised by an individual Act of Parliament, such as the County of Merseyside Act 1980. The amount of the toll is related to the cost of the infrastructure and it, and increases in it, are generally also authorised by legislation. The revenue is used to pay the costs of construction and maintenance. In some cases, such as Dartford and Severn, specific legislation permits tolls on existing infrastructure to be used to finance new build associated with it.

The Transport Act 2000 permits any local traffic authority in England and Wales to levy 'road user charges' in respect of the use or keeping of motor vehicles on roads. The charge must facilitate the achievement of the policies set out in the authority's Local Transport Plan and the net revenue of a RUC scheme will be hypothecated to local transport purposes for at least ten years from the start of the scheme.

Thus, there would be a clear distinction between levying 'tolls' for the use of the bridge(s) and introducing a road user charge which, while it might include the bridge(s), could extend significantly wider to manage congestion in the vicinity.

Public rights of way

A TWA order may include provisions authorising the stopping up and diversion of streets and other public rights of way where it is necessary for the implementation of the scheme authorised by the order. However, if TWA powers were granted for this scheme they would be confined to the works necessary for the construction of the bridge itself. It is unlikely that there would be any need for the inclusion in such an order of powers to alter rights of way. We appreciate that there will need to be a Side Ords Order under section 14 of the Highways Act 1980 in respect of the changes on the approaches to the new bridge.

Yours sincerely,

Philip Mills
Mersey Gateway, Statutory Procedures

Dear Philip

Introduction

I refer to our meeting last week and to previous correspondence in respect of the appropriate statutory powers for promotion of the Mersey Gateway.

Howard Bassford has previously corresponded with the TWA unit and with you as to the appropriate statutory powers. I refer in particular to Alan Moss’s letter dated 20 February 2004 and to your letter dated 7 January 2005. I do not propose in this letter to rehearse in detail the points raised in previous correspondence. Instead, this letter addresses the points raised at our meeting last week and suggests that because of the lack of suitable alternative legislation to provide tolling powers, the TWA should be available to provide tolling powers for the Mersey Gateway and the Silver Jubilee Bridge ("SJB") as well as powers for the Mersey Gateway works. The letter suggests that it would be inappropriate for the Department to insist on Halton trying to obtain powers under legislation which would result in significant delays to such powers being confirmed when the TWA offers an obvious and satisfactory way forward.

My note dated 7 March 2005 set out the potential available statutory procedures for tolling the Mersey Gateway and the SJB. These are as follows:

1. The Transport and Works Act 1992 ("TWA").
3. Transport Act 2000 ("TA").
4. A private/hybrid Bill.

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Date
17 March 2005
The meeting agreed that the TA does not fit well with the proposed tolling arrangements and that a private/hybrid Bill is very much a last resort. Accordingly, the discussion focussed on the TWA and NRSWA procedures.

**NRSWA Procedure**

We discussed the fact that the NRSWA does appear to offer a satisfactory procedure enabling both the Mersey Gateway and the SJB to be tolled. However, because the procedure would involve the appropriation of the SJB as a special road, and because a reasonably convenient alternative non-tolled crossing is unlikely to be considered to be available, special parliamentary procedure ("SPP") would be required following a public inquiry into the order before the toll order could be confirmed. We discussed the uncertainty that SPP would inject into the procedure. First, the need to secure Parliamentary time and, second, objections by MPs and petitioners, are likely to delay the project and result in an increase in project costs. The likely minimum one year delay caused by SPP would result in project costs increasing by some £30 million. The delay and uncertainty are also likely to make the securing of private sector funding for the project more difficult and result in increased residual risks for Halton.

Another difficulty associated with the NRSWA procedure is the fact that it requires the SJB to be appropriated as a special road. You raised the uncertainty of whether a wish to toll a road constitutes a sufficient reason for appropriating it as a special road. While I do not believe that this presents an insurmountable legal hurdle, it does make establishing the case for the appropriation at a public inquiry far from straightforward.

**Transport and Works Act**

My 7 March 2005 note on tolling procedures suggests that the TWA could be used to toll both the Mersey Gateway and the SJB. The only uncertainty over this procedure is whether tolling powers in relation to the SJB could be described as "ancillary" to the works for construction of the Mersey Gateway. Our view, and that of Stephen Sauvain QC, is that the works to the two crossings and their subsequent management should be regarded as being part of the same scheme and designed to achieve the same primary objective. Both crossings will be subject to a single tolling regime and treated as a single entity for management and maintenance purposes. Accordingly, I suggest there is no legal impediment to a TWA Order being used to provide tolling powers for both crossings.

If a TWA order were to be promoted to provide tolling powers it would be, I suggest, somewhat illogical not also to use the TWA to provide powers for construction of the Mersey Gateway. It would enable deemed planning consent to be sought under Section 90(2A) of the Town and Country Planning Act 1990 as well as powers to interfere with navigable waters and compulsory acquisition powers. While recognising that a special road scheme and side road orders would need to be promoted under the Highways Act 1980, use of the TWA as the main legislative mechanism for delivering the Mersey Crossing and tolling powers would obviate the need for as broad a suite of orders as would otherwise be required.

I note the Secretary of State's discretion in section 13(2) of the TWA not to make a TWA order where other powers are available to achieve any of the objects of the order. You will be aware that it is a discretion rather than an obligation to refuse to make an order where alternative powers are available. In this instance, the lack of suitable alternative tolling powers provide, I suggest, an overwhelming case for using the TWA to provide powers for the works and the charging of tolls.

The context in which the TWA was enacted should be borne in mind. As you know, it was passed to avoid the need for parliamentary time to be devoted to private local legislation. A private bill can now only be promoted where there is no legislation available which enables the relevant objects to be achieved. The need to avoid parliamentary time being taken up means that a bill is
very much a last resort. It is suggested that a less stringent test should be applied to TWA orders. There is, I suggest, no obvious public interest reason that requires a TWA order to be seen as a last resort. If a TWA order were not available for the Mersey Gateway, the whole suite of orders that would be required would be likely to result in a longer public inquiry and require a greater resource commitment from the planning inspectorate than an inquiry dealing with a TWA order application and a small number of ancillary orders. In terms of departmental resources, TWA appears to offer the obvious advantage that all the orders can be dealt with by DfT rather than, if a separate call-in inquiry were required in the absence of TWA, the planning application being determined by the Office of the Deputy Prime Minister. TWA would also avoid the need for parliament to be involved through SPP, which is precisely what the TWA seeks to achieve.

Perhaps it would be sensible to have a further meeting once you, and your colleagues in the TWA unit, have had a chance to give these issues some thought.

Do let me know if you have any queries.

Kind regards

Yours sincerely,

Marnix Elseaar

cc Alison Munro, Department for Transport
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   Dick Tregea, Director, Environment/Development Directorate, Halton Borough Council
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27 April 2005

Dear Marnix

MERSEY GATEWAY: STATUTORY PROCEDURES

Thank you for your letter of 17 March following up our discussion on statutory powers for the Mersey Gateway scheme with Halton Borough Council on 9 March. I have now obtained views from colleagues here on the points raised in your letter. My apologies for the delay in responding to you.

As you will know from previous correspondence, the Department is satisfied that Halton BC could promote a scheme for the construction of a new crossing of the Mersey under s.106 of the Highways Act 1980. In addition, the Department is satisfied that Halton BC could promote a toll order or orders under s.6 of the New Roads and Street Works Act 1991 (NRSWA) for both the new bridge and the existing Silver Jubilee Bridge (SJB), provided they become special roads. We see nothing that would prevent Halton BC from appropriating the SJB as a special road although it would be for Halton BC’s legal advisers to satisfy us on this point.

As you state in your letter, there appears to be a strong possibility that if the NRSWA is used to introduce tolls on the SJB, this will necessitate Special Parliamentary Procedure (SPP) if it is considered that no reasonably convenient alternative non-tolled crossing is available to SJB users. However, the Department does not consider that this provides a strong reason for not using the NRSWA. Even applications under the Transport and Works Act can sometimes involve SPP. Experience of the SPP process appears to be relatively limited. To give an example, I understand that in the case of a recent application, an order on behalf of Stoke City Council, which involved the compulsory purchase of open space land for a new bypass and which necessitated SPP proceedings, was opposed during the SPP process and the Order was referred to the Joint Committee. After a hearing lasting a number of days, the Committee reported that the Order should proceed. It appears therefore that SPP can be completed relatively quickly and need not take a year, as suggested in your letter. If you have different examples, or evidence, which can substantiate your statement that SPP could result in a "likely minimum one year delay" it would be helpful if you could let me have these. It is not clear to the Department that this would be the case.

I now turn to the argument in your letter that, given the uncertainties created by the SPP process, there is a strong case for using the Transport and Works Act 1992 (TWA) to secure the powers required both to toll the SJB and the new bridge, and to construct the
new bridge. The Department continues to have significant concerns about the use of the powers in the TWA in this way. In particular:

i. As we have made clear on a number of occasions, the Department does not consider it appropriate to use the TWA where the objects of the Order can be obtained by other bespoke authorisation processes - in this case the Highways Act 1980 and the NRSWA. The TWA was not intended to replace existing authorisation processes which is why there are powers in s13(2) of that Act to reject a TWA Order in such circumstances. As noted above, the fact that the NRSWA may require the use of SPP doesn't, in itself, justify the use of the TWA. The NRWSA provides an available statutory procedure for securing powers to toll the SJB. Parliament saw fit to impose the SPP procedure for NRSWA Tolling Orders under certain circumstances. The Department does not consider that the TWA may be used simply as a means of circumventing that procedure.

ii. An order under s3(1)(b) of the TWA can authorise the carrying out of works interfering with navigation rights and matters ancillary thereto. If the new bridge were constructed under the powers in this section, the tolling provisions relating to that bridge could be regarded as ancillary to its construction. However, the use of powers to provide for the tolling of the existing bridge is, arguably, not directly ancillary to the building of the new bridge. This is a separate matter which is actually ancillary to the tolling of the new bridge, rather than ancillary to the building of the new bridge. In our view, this proposed use of the powers is too remote. When a similar point arose in the case of the Tyne Tunnels, the Parliamentary Agents acting for the promoters and DfT lawyers were so doubtful that tolling provisions relating to the existing tunnel could be held to be genuinely ancillary to the construction of the new tunnel that it was concluded that the only safe course was to insert a suitable provision into the Tyne Tunnels Bill.

For these reasons the Department considers that, even if it is made, any Order made under TWA could be susceptible to challenge as being ultra vires. We do not consider that it would be sensible for Halton BC to promote such an Order in the knowledge that, at the end of a long process, it would be at risk of successful legal challenge.

The Department also considers that, even if a TWA Order were to be used to authorise construction of the bridge and tolling powers, since the scheme as a whole extends wider than the bridge itself, Orders under the Highways Act and planning permission for the non-bridge works would still be necessary. We do not agree therefore that a TWA Order would necessarily reduce the number of different consents or orders needed.

You will appreciate that the Department does not agree with your view that there is an overwhelming case for using the TWA to provide powers for the bridge works and the charging of tolls. Indeed, we consider that Halton BC would expose itself to risk of successful legal challenge if it went down this route. Rather, the Department considers that the Highways Act 1980 and the NRSWA provide the appropriate authorisation procedures in this case.

I am copying this to Alan West and to colleagues here.
Yours sincerely,

Philip Mills
Mersey Gateway – Statutory Procedures

Dear Philip

As you know, Halton Borough Council and its consultant team will be submitting further information to the Department next week on a number of issues on which the Department wanted further details before reaching a funding decision in relation to the Mersey Gateway. The further information is being provided in the hope and expectation that a positive funding decision will be reached by the end of July.

In that context, I write to confirm that the approach to obtaining statutory consents for the Scheme set out in your letter dated 27 April 2005 is agreed. I also attach a list of consents which I believe will be required for the Scheme.

If you do have any queries please let me know.

Kind regards

Yours sincerely

Marnix Elsenaar

cc  Alison Munro, Department for Transport
    David Parr, Halton Borough Council
    Dick Tregga, Halton Borough Council
    Alan West, Halton Borough Council
    Claire Hall, Gifford
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INTRODUCTION

The purpose and scope of this guidance

1. The Transport Act 2000 (the "Act") gives powers to local traffic authorities in England, outside London, and in Wales to introduce if they choose road user charging schemes ('charging schemes') and schemes to levy a charge on workplace parking by means of a licence ('licensing schemes'). In either case, schemes must help to achieve the objectives established in an authority's Local Transport Plan. The Act also allows traffic authorities to work in partnership to set up a joint charging or licensing scheme covering all or part of their combined area.

2. This document gives guidance from the Department for Transport ("DfT") to local traffic authorities in England outside London on how charging and licensing schemes (together referred to as 'congestion charging schemes') should be introduced. In London, where the Greater London Authority Act 1999 gives powers for the Mayor and London boroughs to introduce charging and licensing schemes, guidance (except for joint schemes with authorities outside Greater London) is a matter for the Mayor. The National Assembly for Wales is responsible for guidance on charging and licensing schemes in Wales.

3. Each congestion charging scheme will be established by an Order that, in England, will need the prior approval of the Secretary of State for Transport. This will provide a safeguard that all schemes are practical to operate, fair and consistent with the Government’s integrated transport objectives. The Secretary of State does not envisage approving any scheme Order unless:

   - the scheme will help to tackle traffic congestion;
   - some improvements have been made to local transport provision before charges are introduced to provide drivers with an alternative and encourage them to change travel mode. This could include, for example, new or revised bus services; integrated with train arrivals or linked to Park and Ride sites, enhancements to cycling and pedestrian infrastructure, or a comprehensive real time travel information system;
   - there has been full consultation with local people and businesses on the detail of the scheme;
   - there are plans for spending the proceeds on improvements to local transport that are consistent with the objectives of the Local Transport Plan; and
   - any technology for electronic road charging complies with Standards laid down by DfT (section 176(2) of the Act).

4. The aim of this guidance is to help ensure that schemes will satisfy these conditions. Part One looks at the common procedures for the introduction of congestion charging schemes. Parts Two and Three give guidance on the implementation and operation of road user charging and workplace parking levy schemes respectively.

5. This guidance reflects lessons learnt during the introduction of congestion charging schemes in Durham and London, and work currently underway in
Nottingham. One significant lesson that is already clear is that local authorities should not underestimate the amount of time that will be needed to introduce a congestion charging scheme. Including preliminary work undertaken before the first mayoral election, it took over four years to introduce the central London congestion charge in February 2003. In Durham, the initial public consultation was undertaken in October 2000 (following identification of the scheme as a measure to be implemented in the County Durham Local Transport Plan earlier that year). The scheme itself started on 1 October 2002. Nottingham plans to introduce a workplace parking levy scheme in 2005, over five years after the Local Transport Plan was finalised.

6. Clearly, it is likely that with more experience of scheme development the elapsed time for a local authority to introduce a scheme will shorten. But, it seems unlikely that time savings of more than a few months against those mentioned in the previous paragraph will be achieved. DfT will continue to work with local authorities developing congestion charging schemes and this guidance will be revised as further lessons are learnt.
PART ONE: PROCEDURES FOR INTRODUCING SCHEMES

The Local Transport Plan

1.1 The Act specifies that a congestion charging scheme can be introduced only if "...it appears desirable for the purpose of directly or indirectly facilitating the achievement of policies in the charging [or licensing] authority's local transport plan" (Transport Act 2000 sections 164(2) and 179(2)).

1.2 The Local Transport Plan ("LTP") which the Act also requires local authorities to produce and implement for their area sets out how integrated transport will be delivered at the local level, in partnership with the community. LTPs cover five year periods with the next covering the period April 2006-March 2011. The Department issued guidance on their preparation in March 2000, although revised guidance will be issued in Spring 2004.

1.3 The 'Guidance on Full Local Transport Plans' states that an LTP should consist of five key elements:

- objectives consistent with the Government's overarching objectives for transport. These are to –
  - protect and enhance the local environment;
  - improve safety for all travellers;
  - contribute to an efficient economy, and to support sustainable economic growth in appropriate locations;
  - promote accessibility to everyday facilities for all, especially those without a car; and
  - promote integration of all forms of transport and land use planning, leading to a better, more efficient transport system.

- an analysis of problems and opportunities;

- a long-term strategy to tackle problems and deliver the objectives;

- a costed and affordable five-year implementation programme of schemes and policy measures; and

- a set of targets and performance indicators and other outputs which can be used to assess whether the LTP is delivering its objectives.

1.4 While LTPs should highlight current issues, in formulating them local authorities should look further ahead than the five years of the Plan; certainly ten years and perhaps fifteen years to anticipate future travel demands and potential problems. This forward look is essential to place any proposals for congestion reduction within a framework of sustainable travel.
charging in the wider context, and set out how they and their associated improvements in local transport provision will interact.

1.5 Congestion charges can support the objectives of an LTP in two principal ways. First, they can help to manage traffic and tackle congestion by having a direct impact on traffic levels and traffic growth in both the short and the longer term. Schemes may also help meet other national objectives such as protecting and enhancing the environment or improving accessibility. These objectives may be achieved through both the introduction of charges themselves and through authorities' spending of charging revenue on improved local transport provision.

1.6 The latter is the second way in which congestion charging schemes can assist the achievement of an LTP's objectives. By creating a new and additional income stream to help fund improvements to local transport congestion charging schemes will make alternatives to the car more attractive and improve transport choice. The arrangements for spending scheme revenues are set out in Schedule 12 to the Act. For all congestion charging schemes local authorities are required to produce:

a) a general programme setting out how the revenue from the scheme will be spent in support of LTP objectives over the initial 10 years of the scheme (paragraph 10(1)(a) of Schedule 12); and

b) a detailed programme setting out how the revenue from the scheme will be spent in support of local transport objectives over the remaining years of the current LTP (paragraph 10(1)(b) of Schedule 12).

1.7 The Act guarantees that authorities introducing schemes in the first 10 years after the legislation came into force (which was on 1 February 2001, see Article 3 of SI 2001/57 (c3)), will keep 100% of each scheme's net revenue for at least 10 years from the start of the scheme. The revenues will be ring-fenced and must be spent on transport improvements supporting the LTP but not, necessarily, entirely within the charged area. Longer periods of ring-fencing may be agreed by the Secretary of State on a case-by-case basis (paragraph 8(5) and (6) of Schedule 12 to the Act). The ring-fenced fund may be used to support either or both transport capital and transport revenue expenditure. Charging revenues will be additional to the funds received by the local authorities from the Exchequer. In securing public acceptance of a scheme and, subsequently, accounting for the expenditure of the revenue, authorities must ensure that this additionality is clearly demonstrated.

1.8 As part of the Local Transport Plan Annual Progress Report process, Ministers expect large urban authorities², and any other authorities that consider congestion to be a problem in their area, to set out what steps they are taking to reduce congestion and to make best possible use of the road space. Although this does not require that authorities develop proposals for congestion charging schemes, any that begin to do so in advance of their next full LTP will need to:

² Conurbations with a PTA and urban areas with a population greater than 250,000, i.e., Blackpool, Bournemouth, Brighton, Briml, Hall, Leicester, Middlesbrough, Nottingham, Plymouth, Portsmouth, Southampton and St. Helene.
• Identify the congestion problems faced, and assess how the proposed congestion charging scheme can help to tackle them and contribute to local transport objectives;

• Estimate the time-scale for the design and implementation of the scheme;

• Set out proposals for improving alternatives to the private car ahead of introducing charges;

• Set out proposals for consultation on the detail of the scheme; and

• Estimate the revenue that will be raised from charges and how it will be spent on the objectives of the LTP.

Demonstrating a direct effect on congestion

1.9 The Secretary of State would not normally approve schemes which have negligible direct effects on congestion or, in environmentally sensitive areas, no direct impact on traffic levels. Such effects will be demonstrated either by acting on current traffic levels or, in the longer term, by reducing predicted traffic growth, or by a combination of both. The Secretary of State does not wish to be prescriptive about the time-scales involved. But in submitting its plans to the local community and subsequently to the Secretary of State a local authority must clearly specify the expected impacts and how long will be needed to achieve them. These could for example be set out in terms of a ‘base case’ projection over 5, 10, or 15 years without congestion charging and a parallel projection showing the impact of congestion charging and associated transport improvements.

1.10 To do this, estimates will need to be prepared using modelling techniques or survey work across a scheme’s area. Research indicates that charging can have a direct impact on traffic congestion. For example, the ‘Review of Charging Options for London’ study9 looked at the potential reductions in traffic levels that could be achieved by charging, and underpinned TfL’s development of its central London scheme. The study ‘Options for Influencing PNR Usage’4, suggested that an annual levy of £1000 per workplace parking space could result in around 6% of workplace car trips being switched to an alternative mode of transport. A list of research into the effects of road user and workplace parking charges is at Annex A. In modelling a scheme’s effect authorities will also have to consider the impact a scheme might have on traffic diversion, especially in areas just outside the charged area.

1.11 Defining and measuring congestion is difficult and this difficulty is compounded by the subjective nature of individual drivers’ perceptions. The Government’s 10 Year Plan2 defines congestion as the average delay experienced per kilometre of travel compared to free-flow speeds, that is the average amount of delay experienced by a vehicle travelling one kilometre. However, while helpful as a general guide, this does not reflect aspects such as journey time reliability. So the

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4 Options for Influencing PNR Usage, MVA/W.S. Atkins, February 1999.
DfT has commissioned research to examine what other measures would be more meaningful to the motorist and whether it is possible to produce robust congestion figures for, e.g., individual urban areas or individual trunk roads.

1.12 The Secretary of State will not specify a particular threshold by which a charging scheme must reduce actual or predicted congestion levels as a condition for scheme approval. Ministers intend to look at the aggregate of the package of measures proposed when considering the impact of a scheme. Local authorities may wish to consider a range of indicators of a scheme’s impact. These should include direct measures of congestion, but could also include simpler measures such as traffic volumes, modal shift, total journeys and the proportion made by private cars as opposed to other modes, or environmental benefits. Journey reliability will be an important issue for businesses, including the impact over a wider area than just the charged area. DfT will consider further guidance in due course.

1.13 A scheme may, of course, have further, indirect, effects such as modal shifts resulting from transport improvements financed by the charging revenue. These effects will be welcome but schemes should not rely for their success entirely, or almost entirely, on indirect effects.

**The need for complementary traffic management measures**

1.14 Authorities will need to think about complementary traffic management measures at an early stage in a scheme’s planning process. The measures needed will vary from scheme to scheme but in the case of a licensing scheme they will have to include effective control of on-street parking. Unless an authority can show good reasons for not doing so, DfT will expect it to have taken responsibility for enforcement of on-street parking controls (under the “decriminalised” enforcement provisions of the Road Traffic Act 1991) either before or alongside the introduction of a workplace parking levy.

1.15 Authorities introducing road user charging schemes will also need to consider complementary traffic management measures, including effective control of on-street parking, and any measures needed to cater for diversion of traffic around the charged area. Authorities will need to put traffic signs in place to make it clear, in advance, where and when charges will be applied (in London, for instance, advance warning is provided on major roads about 10-12 miles from the boundary of the charged zone). These signs, possibly including variable message signs, will also need to spell out what charges will apply to which vehicles, and to identify any alternative routes around the charging zone for through traffic. Authorities will need to liaise with DfT to ensure that traffic signs are of an approved design (see paragraph 2.9 and Annex E for examples of signs approved for use in London and Durham).

1.16 In all cases local authorities will need to consult adjacent local authorities about scheme impacts along their common boundaries.

**The need for ‘up-front’ transport improvements**

1.17 For schemes to be effective motorists will need choice about how to make their journeys when faced with the new charges. The Secretary of State will not
approve a scheme Order unless demonstrable transport improvements are being and will continue to be made as the new charges are introduced. In line with local authorities' LTPs, DfT expects that transport improvements will normally be incremental, with many being introduced after charges start.

1.18 Improvements to local transport could range from better bus services and networks, to investment in light or heavy rail schemes, or to better provision for walking and cycling. DfT cannot specify what transport improvements will be needed to secure scheme approval. This will depend, to a large extent, on the size of the scheme and the existing alternatives to the car. Small schemes might not need substantial improvements to local transport before charges are introduced but larger schemes are likely to do so.

1.19 The two road user charging schemes introduced to date, illustrate the two sides of the coin. In Durham, the principal improvement was the establishment of an easy access bus service linking the railway station, park and ride sites and the city centre to provide a good quality alternative for those who had hitherto driven into the city centre. In London, improvements before charging started included the introduction of around 300 additional buses accompanying widespread improvements to the network and increases in late night public transport, improvements in safety and security, and an accelerated programme of road and bridge maintenance. Local authorities will need to decide what improvements are needed in light of their proposals. DfT will work with them to ensure that they are aware of the matters the Secretary of State will take into account when considering whether to confirm their scheme.

**Funding 'up-front' transport improvements**

1.20 Ministers recognise that the scope for 'up-front' improvements to local transport will depend on the resources available. DfT, local authorities and others are investigating the options but DfT envisages that the broad process will be that authorities should:

- identify packages of transport improvements,
- assess their costs against the existing LTP funding and the additional revenue from charging,
- decide if they are deliverable,
- prioritise the schemes required to be in place before charging starts, and
- identify the best ways to fund and procure these schemes (this could involve a mixture of existing funding mechanisms and Public/Private Partnerships).

Where authorities think that public funding has a part to play in delivering improvements this needs to be highlighted in their LTP. DfT will consider proposals on their merits and discuss with each authority how best to deliver their proposed improvements and the best value for money.

**Private Finance**

1.21 The revenue stream from new charges, and the guarantee that this revenue will be ring-fenced for local transport improvements, opens up the possibility of local authorities undertaking a Private Finance Initiative (“PFI”) deal with the private
sector. As noted in the ‘Guidance on Full Local Transport Plans’, DfT considers that PFI funding may be suitable for many local authority transport projects and that authorities should look at the most effective means of delivery as part of their ‘Best Value’ strategies. A PFI deal could be a suitable means of funding:

- the implementation and operation of a congestion charging scheme; and/or
- funding transport improvements, including up-front improvements.

1.22 Annex G of the ‘Guidance on Full Local Transport Plans’ sets out the criteria to which authorities should refer when considering whether PFI may be relevant. DfT recommends that any local authority that is considering a PFI deal should contact the Public Private Partnerships Programme – the “4Ps” – at an early stage to consider the option of PFI funding more fully. The “4Ps” were established to bring about increased investment in local authority services through the PFI and other public private partnerships. They can be contacted at www.4ps.co.uk.

**Borrowing on the strength of charging revenues**

1.23 The Prudential Capital Finance System, introduced by the Local Government Act 2003, began on 1 April 2004. This allows local authorities to borrow for capital expenditure without Government consent, provided that they can afford to service the debt without extra Government support. In deciding what is affordable, authorities must carry out a long-term assessment of the cost of the debt, their anticipated revenue income and other spending commitments. Congestion charging income may be taken into account, to the extent that it is considered to be a reliable and predictable long-term revenue source. The risks that any such source of income may in future reduce or cease or become volatile must be properly determined and reflected in the weight that is placed upon the income in the affordability calculation.

**Transfers between the Charging Account and the General Fund**

1.24 The ring-fenced charging account may only be used to support capital and revenue spending on local transport. Some authorities may wish to explore the possibility of advance transport improvements being funded from their general fund or from existing capital resources such as borrowing or usable capital receipts. Surpluses on the charging account in later years could then be used to reimburse the general fund. In this situation the charging account could provide revenue for general use equivalent to the total capital resources consumed on transport improvements in advance of introducing charges. It will be essential that authorities keep track of cumulative advance transport spending and match it to any subsequent transfers from the charging account. Charging account money may not be spent for non-transport purposes. If it is not spent immediately on transport, it should accrue interest. A clear audit trail that justifies any transfers from the charging account will be essential.

**Co-ordination with regional and local planning policies**

1.25 Ministers have made clear that congestion charging must complement the objectives set out in Planning Policy Guidance Note 13 (PPG13). Regional transport
strategies will set the regional framework within which LTPs should introduce these measures.

1.26 Local authorities should be aware of the potential for congestion charges to increase pressure for dispersal of development away from the charged area to other locations that could be more car dependent. They will need to pay particular attention to the boundaries of a scheme, the times when charges will apply, and the use to which proceeds are put, to ensure that the overall effect of the planned measures is to promote town centres as preferred locations for development. Planning policies should continue to be used to resist dispersal. (See paragraphs 163 & 164 of the 'Guidance on Full Local Transport Plans').

Scheme objectives appraisal and monitoring

Setting scheme objectives

1.27 Before addressing the fine detail of a congestion charging scheme, authorities must be clear about what they expect it to achieve and they must set overall objectives which are clear, realistic, measurable and tie in with the objectives of the LTP. Authorities will need to set out a timetable for monitoring, assessing and reviewing the impact of schemes, including the impact on businesses.

1.28 One objective must set out the expected impacts of the scheme on reducing congestion, in both the short and long terms. Another should look at the accompanying improvements in transport provision, whether they precede the introduction of charging or come later. Other objectives will be specific to the problems that each authority is trying to tackle, and may cover issues such as reducing air and noise pollution, reducing accident rates, promoting social inclusion, or improving accessibility. This list is not exhaustive.

The New Approach to Appraisal

1.29 Where an LTP includes proposals for congestion charging, some appraisal of the scheme will have been undertaken as part of the wider appraisal of the LTP. Nonetheless, local authorities proposing a congestion charging scheme will need to decide on the right level and rigour of analysis needed to support their scheme appraisal. There can be no hard and fast rule about this, but two principles are central. The first is that the cost of providing such information must be related to the size, complexity and implementation costs of the scheme itself. The second is that the credibility of the LTP and the congestion charging scheme will depend on the quality of the information and analysis provided. Local authorities should discuss the level of analysis they need to supply in support of their scheme appraisal with DfT at an early stage.

1.30 Although in formulating the objectives of a congestion charging scheme a local authority may have grouped the charging process and complementary transport improvements together in one 'package' there is no requirement to do so. In the case of a road user charge that is only levied at one point and perhaps funds a single Park and Ride service it may be both mature and logical to treat this as one 'scheme'. But in the case of a city or large metropolitan area where the introduction of congestion
charging is associated with a programme of transport improvements extending over a number of years it may not be sensible to envisage a single 'scheme'. Certainly, the charging process itself may be packaged with several transport improvements but other improvements may because of their size, complexity and time-scale be better suited to separate handling. The DfT requires that the appraisal of all transport improvements or packages, whether financed in full or in part by scheme revenue, should follow the New Approach to Appraisal (NATA). This will allow direct comparisons between schemes to be made and best value for money considerations to be undertaken. In general the expectation will be that the appraisal should demonstrate a positive net present value.

Regulatory Impact Assessment and Environmental Impact Assessment

1.31 As a key part of the appraisal process local authorities should undertake an assessment of the impact of their scheme modelled on a Regulatory Impact Assessment (RIA). This is a policy tool that assesses the impacts, costs, benefits and risks of government measures that could affect businesses, charities or the voluntary sector. For smaller schemes the RIA is likely to be subsumed within the appraisal; for larger schemes, DfT expects a free-standing RIA to be prepared. Further information on the approach to RIAs is available from the Cabinet Office's Regulatory Impact Unit, from its publication 'Good Policy Making: A Guide to Regulatory Impact Assessment' and from the Cabinet Office web site - www.cabinet-office.gov.uk/regulation/index.htm.

1.32 As part of the normal planning control process authorities will need to undertake an Environmental Impact Assessment if the appropriate criteria are met. DETR Circular 2999 'Environmental Impact Assessment' gives further guidance. Whether or not an EIA is legally required under the planning system all local authorities will need to provide a report assessing the anticipated environmental effects of their proposed scheme. The length and detail of the assessment will depend on the scale of the scheme. In the case of a large-scale electronic road user charging scheme an authority may wish voluntarily to prepare a full EIA covering the impact of charging infrastructure, the effect of traffic reductions and displacement, and the expected environmental benefits and dis-benefits. Authorities may decide that a shorter and simpler record is appropriate for smaller schemes.

1.33 EC Directive 2001/42/EC (Strategic Environmental Assessment), will be implemented by Regulations made by the Office of the Deputy Prime Minister and will require environmental assessments to be carried out for plans and programs that are prepared for, amongst other things, 'Transport', and which set the framework for future development consent of projects listed in the Directive on Environmental Impact Assessment (85/337/EEC). Where a charging scheme is linked to future projects authorities will need to consider the requirements of the Directive.

Best Value

1.34 As said above, the decision to introduce a congestion charging scheme must be made in the context of an authority's Local Transport Plan. Best Value, local strategic partnerships, community strategies and the planning framework are all relevant issues in taking forward LTPs.
1.35 Since 1 April 2000, local authorities have had a duty to achieve Best Value in the provision of all their functions. All transport functions will have to be subject to a Best Value review once in every 5-year period.

1.36 Authorities' Annual Performance Reviews will identify the relationship between the implementation of LTPs and Best Value. They should refer to relevant information contained in the Best Value Performance Plans, and should report progress against Best Value performance indicators (both national and local), wherever appropriate, to show progress against the targets and objectives in their LTP. They should include the outcome of any Best Value reviews of transport-related services, and indicate the timetable for future reviews. The outcome of any Best Value reviews may impact on authorities' decisions whether to implement charging and, if so, the best approach to adopt and priorities for spending revenues.

**Scheme monitoring**

1.37 The effects of a congestion charging scheme must be carefully monitored against its objectives. This will include not only the effects on congestion but also the improvements in local transport provision such as in service provision and quality, and what impacts the scheme has had on social inclusion and exclusion. The monitoring programme, which could extend over a number of years, particularly if reductions in congestion are expected to accrue over time, must determine whether or not each scheme objective has been met. It will probably involve the use of a mixture of qualitative and quantitative measuring techniques including cost benefit analysis, both before the scheme has begun and during its operation. This is particularly important for the first schemes to be introduced because of the need to assess their effects so that further guidance and best practice can be issued.

1.38 Monitoring arrangements for congestion charging schemes should form part of a local authority's wider proposals for monitoring performance against the indicators in its LTP. The annual LTP progress report will allow local authorities to put performance indicators in context and set out how a scheme has contributed to local transport objectives. The 'Guidance on Full Local Transport Plans' contains detailed information on LTP monitoring arrangements.

**What should be included in Congestion Charging Orders?**

1.39 The Act requires that a congestion charging scheme will be established by a local Order that will require confirmation by the Secretary of State before it comes into force.

1.40 There is no 'generic' form of Scheme Order, each will reflect the nature of the scheme proposed. However, a copy of the Durham road user charging Order is attached (Annex F) for reference.

1.41 The Order should include the following information (further explanation and detail is provided in Parts Two and Three below):

**The title, and the name of the Order-making authority (ies)**
1.42 An authority should prepare a draft Order well in advance of seeking confirmation by the Secretary of State. The draft Order will most likely form the basis for formal consultation on the detail of the scheme, which will be required before the Secretary of State considers confirming an Order.

**The proposed duration of the Order and when it comes into force**

1.43 The Order should state when congestion charging will start, and whether it will remain in force indefinitely or for a specified period. Either case allows an authority flexibility to review matters at any time, and the Act provides that congestion charging can be revoked with a minimum of legislative obstacles. An Order that is for a finite period will need to be remade if congestion charging is to continue beyond the period specified (sections 168-172 of the Act).

**A brief statement about the general nature and effect of the Order**

1.44 The Order should provide a summary of the objectives of congestion charging and how it will help to deliver LTP objectives;

**The name of the roads or the boundary within which charges will apply**

1.45 In the case of a road user charging scheme, the Order must either list each road or part of a road on which charges will apply, or define a boundary or boundaries within which charges will apply on all roads. For example, charges could apply to all roads inside an area bounded by a ring-road, and may or may not (as is the case in London) apply to the ring road itself. A workplace parking levy Order must define the boundary or boundaries within which the levy will apply.

**The event which triggers liability for a charge**

1.46 A road user charging Order will need to spell out when a charge becomes due. This could be when a vehicle passes a designated point on a road, or is driven or parked on a designated road at a time when charges apply. In the case of the workplace parking levy, the 'event' will be the parking of a vehicle within the scope of the Order within the licensed area.

1.47 In the case of road user charging, it is recommended that every scheme specifically provides that drivers shall be exempt from any charge they incur where these charges were imposed as a consequence of complying with directions given by a constable in uniform.

**How charges are to be made, collected, recorded or paid**

1.48 For road user charging, this will depend on the mechanism proposed and it will be linked to whatever triggers liability for a charge. For example, charges for passing a cordon could be paid and collected at a specified point on a road using toll booths. In this case the Order could provide for payment to be made by cash, or perhaps a payment card, at the time of entry. If a scheme used electronic systems, the
Order would need to specify whether there was a post-payment option and what electronic equipment must be carried on a vehicle. In the case of a permit system the Order may need to specify that a permit must be carried and displayed;

1.49 A workplace parking levy Order will need to state when a licence is required and how payment is to be made (section 186 of the Act). Both annual and shorter period licences must be available. For annual licences, DfT recommends that local authorities allow payment by instalments. The Act provides that a licence cannot be granted for more than one year (section 188(3) of the Act);

The definitions of the classes of vehicles to be charged and the level(s) of charge(s)

1.50 The Order will need to specify which classes of vehicles are to be subject to what charges. The permitted classes of vehicles are set out in Regulations [see annex B].

The times when charges will apply

1.51 The Order should specify when charges would be levied. Different charges, including zero charges, could be levied on different days, at different times of the day, and in different parts of a local authority's area.

The level(s) of penalty charge(s)

1.52 The Order will need to state what penalty charges apply. Setting the level of penalty charges is discussed further in paras 2.55-2.61.

Whether there are any local exemptions or concessions

1.53 If local exemptions or concessions are proposed, the Order should state what these are and how and when they apply. The Order must be consistent with requirements about exemptions, reduced rates of charges and limits on charges set out in any Regulations made by the Secretary of State (section 172 of the Act).

State Aid

1.54 In considering exemptions and concessions authorities must take into account the requirements of Article 87 of the Treaty of Rome which prohibits the granting of unauthorised aid by an EU Member State. The prohibition covers the granting of aid by an EU Member State or through an EU Member State's resources which distorts or threatens to distort competition, by favouring certain undertakings or the production of certain goods, insofar as it affects trade between Member States.

1.55 The definition of 'aid' is wide – it can include not only direct subsidies but also exemptions from taxes or other measures having equivalent effect. For example, an exemption from charges, for a particular sector of industry such as the steel industry, could constitute a state aid. There are, however, a number of areas where the European Commission may allow exemptions and derogations, including assistance to help promote the economic development of deprived areas. Specific aid to small and medium sized enterprises is covered by a block exemption (Commission Regulation
Proposals for spending congestion charging revenues

1.56 These proposals will be approved by the Secretary of State as part of his approval of the scheme Order. The detail required will depend on the amount of revenue likely to be raised. DfT does not want local authorities to seek approval from the Secretary of State for each individual item in their spending plans. However, the power to approve spending plans will ensure that potentially large sums of money raised by the new charges are spent on value for money transport improvements that support the Government's integrated transport objectives.

Consultation on scheme details

1.57 The Secretary of State attaches considerable importance to full local consultation on the details of each congestion charging scheme and will not approve any scheme that does not meet this important requirement.

1.58 Local authorities must consult and actively involve in the debate local people and businesses, motorists, transport users and operators, and organisations representing those such as disabled people likely to be affected by the charging scheme. Local business organisations will need to be consulted, but authorities should bear in mind that many businesses, especially smaller ones such as small shops or restaurants, may not belong to local representative bodies. Authorities will need to ensure that they find ways to include them in their consultation arrangements.

1.59 The extent of consultation will depend on the size and characteristics of a scheme. A local authority must consult its neighbouring authorities and must use its best endeavours to offer those who regularly enter or have business in the proposed charged area the opportunity to comment on the plans. In some cases, such as historic towns or National Parks which attract large numbers of occasional visitors, the local authority should ensure that consultation includes a representative sample of such visitors as well as those organisations representing interests specific to such locations.

1.60 The arrangements for promoting and consulting on a congestion charging Order should follow broadly the procedures set out in the Local Authorities' Traffic Orders (Procedure)(England and Wales) Regulations. DfT expects that an authority will undertake extensive informal consultation on the detail of a scheme before and during the preparation of the draft Order. This will be followed by formal consultation when the draft Order is published and plans and other documents made available for public scrutiny, and with an invitation to make comments. Once a local authority has considered and, where necessary, acted upon the comments received, it will submit the draft Order to the Secretary of State for approval.

Key consultees

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1.61 Regulations under the Act may, in due course, include statutory consultees who must be consulted as part of the wider consultation described in para 1.57. At present DfT intends that consultation should be carried out with the following key consultees:

- neighbouring local traffic authorities and immediately adjacent local authorities which are not traffic authorities, including where there are two tiers of local government, the district council or councils responsible for the area covered by the scheme;
- the chief officer of each police force area covered by the scheme;
- the chief officer of each NHS Trust in the area of the scheme, including the chief officers of the ambulance services;
- the local chief officer of each fire brigade in the area of the scheme;
- the Highways Agency;
- the local Regional Development Agency; and
- the Passenger Transport Authority if the scheme or any part of it is in a PTA area;

and, in the following cases, both the local branches and the national headquarters of the:

- Freight Transport Association;
- Road Haulage Association;
- Confederation of British Industry;
- British Chambers of Commerce;
- British Retail Consortium; and
- Association of Town Centre Managers.

1.62 Key consultees must be sent a copy of the draft Order and any supporting material as soon as is practical once the notice of the proposed Order has been published. Supporting material should include:

- a copy of the published notice of the proposed Order;
- a map showing the location of the chargeable area(s);
- information on scheme appraisal and impact assessments, and
- the programme for spending the net revenues on local transport improvements.

1.63 DfT and the relevant Government Office should be sent a copy of the draft Order.

Publication of proposals

1.64 One of the key lessons of the development of both the London and Durham schemes is the need for extensive and continuing programme of public information. Authorities should consider the use of all forms of media - print, radio, television, web-based - to explain their proposals. DfT also expects local authorities to make copies of draft Orders available in Braille and different languages, as appropriate. Local authorities will find it worthwhile looking at the ‘Code of Practice on Written
Consultation', published by the Cabinet Office at www.cabinet-office.gov.uk/servicefirst/index/consultation.htm and at the advice in the Motorists’ Forum’s paper on the best ways of consulting motorists, which is available at www.cft.gov.uk/mf.

1.65 DfT advises that the details of the draft Order should be published at least once as a notice in at least one newspaper that has a circulation in the areas from which the majority of those affected by the proposed charges come. This may not be practical in cases such as National Parks and, here, local authorities might use both papers published in the immediate area and in the nearest major centre of population. An authority should give notice of the draft Order in the London Gazette.

1.66 An authority must also make a copy of the draft Order available for inspection at its principal offices during normal office hours, and at such other places and times as it thinks fit. These places may be both inside and outside the authority’s own immediate area. This could be particularly important for larger schemes affecting people driving in from neighbouring local authority areas. Supporting documentation such as scheme appraisal information should also be made available.

1.67 Authorities should also take any other steps that they consider necessary to ensure that adequate publicity about the Order is given to persons likely to be affected by it. These should, at least, include the following:

- the display of notices on roads or other areas affected by the Order;
- posting a copy of the draft Order and consultation arrangements on the authority’s web site;
- particularly for workplace parking levy schemes, the delivery of notices or letters to premises within the area covered by the scheme;
- a contact point or an information office for local people and businesses to ask questions and find out more about the detail of the scheme.

1.68 DfT expect that the period allowed for consultation on a draft Order should be at least 12 weeks. Allowance should be made for public holidays if they fall within the consultation period.

Comments on the Proposals

1.69 Authorities should accept comments in both written and electronic form, and published material should include addresses where comments can be sent.

1.70 Authorities must consider carefully all the comments they receive before an Order is submitted to the Secretary of State for approval. Depending on the number and nature of the comments, it may first be necessary to amend the draft Order. If so, and if this entails substantial changes, further local consultation would be advisable prior to submission to the Secretary of State.

Inquiries into Scheme Proposals

1.71 The Act gives powers to a local authority to hold an inquiry into a congestion charging scheme if it wishes (section 170 of the Act). The powers are permissive, and
there is no requirement to hold an inquiry. Nor is the form of any inquiry prescribed. There is no assumption in the legislation or in this guidance about which approach is most appropriate if an authority decides to hold an inquiry.

1.72 The options for an inquiry could encompass a formal public inquiry chaired by an independent inspector, or a range of other, less formal approaches such as a programme of public meetings. The right approach for each scheme is for each local authority to decide, having regard to the size of the scheme, and to the extent of objections or local controversy caused by the proposals. Authorities will need to decide, with appropriate legal advice, on a process of consultation and inquiry that is sufficiently robust for the particular circumstances. Nottingham City Council is holding an independent public inquiry, run by the Planning Inspectorate, into its workplace parking levy scheme proposals. The Inspector will report the findings directly to the City Council. The Planning Inspectorate provides this service for independent public enquiries at a charge. The Inspector will be completely independent of both the Council and Government.

1.73 Where a formal public inquiry is held, the authority will be responsible for appointing the person(s) to chair the inquiry and for the costs of holding the inquiry and its accommodation. Parties at the inquiry will bear their own costs for attendance and for being represented if they so choose. The Act does not include powers for the Secretary of State to make procedural rules for inquiries into congestion charging schemes, although local authorities should bear in mind the existing procedural rules for planning and highways inquiries.

1.74 A decision to hold an inquiry could be taken after proposals for a scheme have been published and comments considered. If so, arrangements for publicising the inquiry should follow those for publicising the notice of the proposed Order. The notice of an inquiry should:

- state the title of the Order;
- state the name of the Order-making authority;
- refer to the notice of proposal and the intention to hold an inquiry;
- give a summary of the general nature and effect of the Order;
- state the date, time and place of the inquiry;
- state the name of the person who has been appointed to hold the inquiry;
- reiterate where the Order and supporting documents can be inspected,
- explain how people can attend the inquiry or make representations, and
- give addresses to which written and electronic comments can be submitted for consideration at the inquiry.

1.75 Alternatively an inquiry to examine any or all aspects of a proposal could be an integral part of the planned consultation process. If so, the notice of the proposed Order should make it clear that an inquiry is to be held and state its date, time and place. It should also give addresses to which written and electronic comments can be sent for consideration at the inquiry.

1.76 After an inquiry is held, an authority will need to consider the report and any recommendations in it and may decide to modify its draft Order before submitting it to the Secretary of State for confirmation.
The Secretary of State's confirmation

1.77 Following consultation on the detail of a scheme, the Order will need to be submitted to the Secretary of State for confirmation (section 169 of the Act). Unless the local authority is extremely experienced in handling such matters, it is recommended that a draft Order is submitted to the Secretary of State in the first instance. To facilitate this process, DfT would expect to receive:

- the draft Order;
- a statement of the purposes of the scheme, including a location map(s);
- financial estimates of scheme income and running costs;
- the authority’s detailed plan covering the rest of the Local Transport Plan period, and its general 10-year plan, for spending charging revenues (which are required under paragraph 10(1) of Schedule 12 of the Transport Act 2000);
- the Regulatory and Environmental Impact Assessments as appropriate;
- the appraisal(s) of the scheme;
- a report on the consultations about the scheme; and
- supporting background information explaining:
  - how the scheme will operate and be enforced;
  - the authority’s reasons for the proposed charge levels, penalty charge levels, and any differential charges; and
  - any exemptions and concessions proposed.

A separate set of these documents should be submitted at the same time to the appropriate Government Office.

1.78 As explained above it is the responsibility of the local authority promoting a scheme to consider and respond to the views and objections of consultees, to decide if an inquiry is appropriate and, if so, to decide what form it should take. Consideration of the representations made during consultation may result in the authority deciding to modify its draft Order, or deciding to submit the Order unchanged to the Secretary of State for confirmation. The DfT anticipates that further representations will be made to the Secretary of State at this stage. It intends to refer these back to the local authority promoting the scheme to provide an account of what consideration has been given to the representation. The Secretary of State will want to be satisfied that proper consideration has been given to the views and objections expressed in the consultation exercise.

1.79 However, the Secretary of State does not propose to get closely involved in assessing the detail of individual schemes and, for example, does not wish to second-guess authorities on matters such as the precise level of charges, local exemptions or concessions or the boundary of a charged area. These are matters for authorities to consider in light of local circumstances and a scheme’s objectives.

1.80 The conditions for scheme approval outlined in paragraph 3 of the Introduction will ensure that a scheme is sensible and fair in broad terms, will help to deliver LTP objectives, provides value for money and is consistent with the Government’s national integrated transport objectives.
1.81 The Act gives the Secretary of State reserve powers to consult others on a scheme, to require an authority to undertake more consultations, or to require the holding of an inquiry (section 170 of the Act). If local authorities follow the guidance in this document the Secretary of State does not expect to use these reserve powers.

Varying an Order

1.82 DfT recognises that an authority is likely, sooner or later, to want to vary some of the features of a congestion charging scheme. There are two ways this could be achieved:

- **by making a Variation Order.** This would be for significant changes, such as changes to the classes of vehicle to be charged or the boundary of the charged area. The proposed variation would need to be consulted on. Those aspects of the original Order that were not being changed would not need to be consulted on nor covered in the Variation Order, which would need to be confirmed by the Secretary of State (section 169 of the Act);

- **by making a new Scheme Order.** This would be necessary if substantial changes were being proposed to a scheme, such as moving from a paper permit to an electronic system requiring equipment to be fitted to vehicles. The new Order would replace the previous Order, and would need the Secretary of State’s confirmation (section 169 of the Act).

1.83 The authority will have to consider what publicity needs to be given to changes to an Order. This might vary depending on the circumstances, and could include variable message signing where charges are suspended at short notice. In general, where changes are proposed, DfT recommends that forewarning of the change should be given by publishing a notice in at least one local newspaper 21 days before the change is due to come into force. Authorities should consider what further local publicity such as radio and television advertisements might be necessary.

Variation Orders

1.84 For changes to the levels of charge, alterations to the scheme boundary, or changes to local exemptions or concessions, the authority will need to use a Variation Order.

1.85 A Variation Order will need to set out what change is being made to the original Order, what the new arrangements will be and when they take effect. The procedure for making a Variation Order will depend on the changes being made. But in all cases at the very least, a ‘Notice of Variation’ should be published in at least one newspaper circulating locally at least 21 days before it is due to come into force. The Notice must specify the name of the Variation Order, the proposed change or changes, and when they come into force. Again, the use of television and radio to get the message across to the widest audience should be considered.

1.86 Until experience has built up DfT proposes that consultation procedures for Variation Orders should be agreed between it, the Government Office and local
authorities on a case-by-case basis. In reaching a decision account will be taken of the importance of the proposed variation, the size of the scheme and any previous consultation on the issue in question during consultation on the original Order. It will also be necessary to agree what degree of appraisal needs to be carried out of the effects of the changes, and what information needs to be provided in the consultation process and when the draft Order is submitted to the DfT. (See para 1.77).

1.87 The Act gives the Secretary of State powers to make Regulations setting out when his confirmation of an Order is not required for a variation to a scheme (section 169(2) of the Act). DfT plans to make Regulations once the lessons from early schemes have been learned. In the meantime all Variation Orders will need the Secretary of State’s confirmation.

New Orders

1.88 Where a large number of substantial changes are proposed to a scheme the authority will need to consult DfT about whether a new Order, rather than a Variation Order, would be more appropriate. If a new Order is decided on then the authority will need to follow the full procedures outlined above.

Revoking Orders

1.89 The Act ensures that an authority can revoke an Order with a minimum of constraints. Orders revoking schemes do not need the approval of the Secretary of State. Local authorities that want to revoke an Order will need to consider what consultation or notice of their intention would be reasonable. This will most likely depend on the scale of the scheme and the reason for revocation. Authorities considering revoking schemes will also need to bear in mind the impact on any contractual obligations they may have.

Accounting for congestion charging revenues

Annual accounts

1.90 The Act requires authorities to account separately for congestion charging revenues (paragraph 6 of Schedule 12 to the Act). This will increase transparency and help make it clear to local people how much money is being raised through congestion charging, and how that money is being spent on improving local transport. It will also help to demonstrate that congestion charging revenues are additional resources for local transport improvements above and beyond those provided by the Exchequer.

1.91 Authorities must account separately for the revenues from congestion charging schemes and a statement of account must be prepared for each financial year. This must be published in the annual accounts of the authority. The ‘Code of Practice on Local Authority Accounting in the UK, A Statement of Recommended Practice’ (the SORP) developed by the CIPFA/LASAAC Joint Committee now requires, in the form of a disclosure note to the Consolidated Revenue Account, a brief explanation of the
nature of any scheme under the Transport Act 2000, including the gross income and expenditure of the scheme, the net proceeds of the scheme (including, for joint scheme the apportionment of such fees).

1.92 Subject to further consultation DfT may also require authorities to make an annual return showing further details of scheme revenue and expenditure.

1.93 Public accountability will be very important. Authorities should consider the best arrangements for keeping local people and businesses regularly informed of the key revenue and spending details of their congestion charging scheme in simple and accessible ways. There is some concern amongst businesses and members of the public that charging revenue will substitute for existing funding from central Government, or that the single capital pot arrangements will permit authorities to divert existing transport funding to other services. Local people and businesses will need to be assured that charging revenues are additional to the existing transport funding that an authority receives from central Government, and additional to the authority’s existing spending on transport.

**Gross and net proceeds**

1.94 The Road User Charging and Workplace Parking Levy (Net Proceeds)(England) Regulations 2003 (SI 2003/110) set out how a scheme’s net proceeds should be determined. The congestion charging account will form part of a local authority’s global accounts. Following proper accounting practices will ensure that there will be no conflict between the preparation of the congestion charging account and the rest of an authority’s annual accounts. It will also ensure that authorities are not inhibited from sensible corporate management of cash and borrowing, including amounts attributable to the congestion charging account.
PART TWO: ROAD USER CHARGING - POLICY AND PRACTICE

Scheme design

2.1 The Act does not place restrictions on how road user charges can be levied and collected. It is for authorities to decide the best approach for their scheme and their area. However, Ministers do not expect to approve any road user charging scheme that proposes charges based on vehicles’ speed or on length of time spent in a charged area. Research indicates that these encourage dangerous driving behaviour, such as speeding and rat-running, in an effort to minimise the charge to be paid. There is also evidence of a strong preference amongst drivers for knowing in advance what a trip will cost.

2.2 DfT expects that a local authority road user charge will take one of two main forms:

- charges could be levied for entering a defined area (a cordon charge). This could be refined by having additional charges for crossing inter-zonal boundaries within the cordon or for passing points on designated roads within the area bounded by a cordon;

- charges could apply for driving and/or parking a vehicle on a road within a defined area (an area charge of the type applied in London).

2.3 Charges could be collected and enforced in several ways, for example:

- using traditional toll booths with barriers or bollards (as in the Durham city centre scheme) to control entry to the charged area;

- by requiring a vehicle to display a paper disk or permit to enter or be within a charged area (this might be particularly suitable in environmentally sensitive locations such as historic town centres or National Parks);

- through a database listing the registration numbers of vehicles that have been pre-paid to be within a charged area, with enforcement through cameras recording registrations of vehicles entering, leaving or within the charged area. A post-payment option could be available for a limited period for motorists who have not pre-paid (this is the approach adopted in central London);

- electronically – using a device in or on each vehicle which transacts with equipment at the roadside when the vehicle passes it. Payment would be made from an on-board unit loaded with “units” (either integrally or

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through a smartcard); or the charge would be debited from a separate account which could allow pre- or post-payment;

- electronically – where a vehicle monitors its own position and matches it with the area or roads where charges apply using satellite technology.

- for fleet operators a block payment system could be used, thereby making collection simple both for the authority and the businesses involved (again this is the approach adopted in London).

2.4 Barrier-based charging will be practicable only in the smallest of schemes. Those that rely on more advanced technologies such as mobile communications systems may be too expensive for the purpose, at least in the short term. Some local authorities may, at first, choose to implement a straightforward paper or camera-based scheme that might migrate into an electronic operation over time. In the medium term once national specifications are established (see next paragraph) moving straight to some form of electronic charging scheme could be the best approach for large metropolitan areas.

2.5 The Secretary of State does not envisage confirming an Order for an electronic road user charging scheme unless the right technology is available to make the scheme work. DfT is currently (2004-05) undertaking research through the 'DIRECTS' project to establish national standards for electronic charging equipment to set national equipment specifications, to ensure inter-operability between different electronic charging schemes, and to provide a single billing source nationally in the longer term. Any local authority that is considering introducing an electronic charging scheme must liaise with DfT about equipment standards and specifications.

2.6 In designing schemes authorities will need to consider issues such as the boundary of the proposed charged area and how it could affect access to businesses and retail premises on its periphery, and the effect of charging equipment on the ambience of the area. All schemes will of course need to comply with planning and environmental impact procedures.

Data protection

2.7 To enforce road user charging schemes authorities may have to collect and retain information on vehicles that have entered a charged area. If so the provisions of the Data Protection Act 1998 will apply. The Act, which came into force on 1 March 2000, provides for people whose personal data has been collected, for whatever reason, to be informed about who is collecting the data, the purposes for which the data is being collected and how they can access the data that has been collected on them. Personal data refers to information about any living individual. For charging authorities this includes any feature from which a person can be identified (such as a photograph, a car number plate, etc). Charging authorities will need to discuss with DfT and the Information Commissioner at an early stage how they will meet their obligations under the Data Protection Act 1998.

2.8 All organisations processing personal data must notify the Information Commissioner who will then place the information on a public register of data
controllers. It is a criminal offence not to register with the Information Commissioner. For further advice and comprehensive information on data protection, visit the web site at www.dataprotection.gov.uk. Alternatively contact the Information Commissioner at:

Information Commissioner,
Wycliffe House,
Water Lane,
Wilmslow,
Cheshire
SK9 5AF

Switchboard 01625 545 700
Fax 01625 524 510

Signs

2.9 Authorities introducing road user charging schemes will need to provide appropriate signs for users. These will inform them in advance of when they are approaching a charged area, give alternative routes avoiding the charged area for through-traffic, inform them about when and where charges will apply, and what charge has to be paid. Depending on the area covered by a scheme, these signs may need to be placed several miles in advance to permit drivers, particularly of through traffic, to take alternative routes. DfT has responsibility for authorising signs and ensuring that they are consistent in layout with best practice, can be understood by drivers and meet the terms of the Traffic Signs Regulations and General Directions 2002 (SI 2002/3113) and the Traffic Signs Manual. All road user charging schemes will be required to use the same common symbol (see Annex E). Although signs announcing a charged area would have to use this symbol DfT would have no objection to authorities varying the wording used with it if they want to include a geographical or descriptive name to denote their charging scheme. Authorities will be expected to consult DfT at an early stage on the descriptors they wish to use. Authorities may also wish to consider the approach adopted in London of using coloured surfacing to mark zone entry points to a charged area to reinforce the use of the charging zone symbol.

Complementary trunk road charging

2.10 The Transport Act 2000 provides limited powers for charges to be introduced on trunk roads, at the request of a local authority, where they are needed to ensure the successful operation of the local authority’s charging scheme. This might be necessary in two situations, first where a trunk road passes through the area of a local charging scheme, and secondly as a way of tackling traffic diversion problems. Any local authority that thinks a scheme will need complementary trunk road charging must consult DfT at the earliest stage. In such cases, the revenue raised on the trunk road(s) could accrue to the Secretary of State or be included with that raised on the local authority’s roads and apportioned between the parties.
The structure and level of charges

2.11 DfT believes that local authorities should be responsible for deciding when and where road user charges are levied, subject to the requirement that every charging scheme is tackling a local congestion problem, and that the other broad conditions for scheme approval outlined in the introduction are met. It will be for local authorities to decide, in consultation locally, which roads should be charged, the boundary of a charged area, the vehicles that are to be charged, the structure and level of charges, and when and how they apply.

2.12 A Scheme Order will need to specify what charges apply to which classes of vehicles. Regulations\(^8\) made under the Transport Act 2000 define classes of vehicle based on EU Directives for the type approval of motor vehicles. Common classes will help to ensure a basic level of consistency across the country, and to help ensure that electronic charging schemes are interoperable. The regulations allow the option of charging lorries and Public Service Vehicles (PSVs) by weight or number of axles, as some barrier-based schemes may need to use axles rather than weight as their basis for charging.

2.13 In practice the ability to levy different charges on different classes of vehicle will depend very much on the type of charging scheme. Electronic charging can offer considerable flexibility to vary charges between classes of vehicle. But including a large number of different charges for different vehicle classes in a scheme will increase the administrative and enforcement effort needed, and could require more elaborate signing than might be practical.

2.14 While the vehicle classification regulations include a relatively large number of vehicle categories, classes can be grouped together and charged the same amount. DfT recommends that charging schemes should base their charges on a simple system using a small number of the available classes combined. Exemptions and concessions will be possible within classes - for example for vehicles using clean fuels, or for cars with smaller engine sizes, or for taxis.

When should charges apply?

2.15 In some cities congestion is a problem throughout the working day and, if so, there may be a strong case for levying charges across the whole of that time, for example between 7:00am and 7:00pm. Elsewhere, congestion may only be a problem during peak commuting periods, particularly in the morning, and charging may be needed only between, say, 7:00am and 10:00am. Local authorities may want to consider the case for levying charges during both the morning and evening peaks, although congestion in the evening might not be as serious or condensed as that during the morning. Local authorities will also need to assess the practicalities which may influence the type of charging scheme introduced - for example a permit-based

area licence is probably not suitable for charging both inward and outward peaks: a cordon-based scheme would be better.

2.16 When deciding which days of the week charges should be applied, authorities should bear in mind that, in all cases, the scheme should be tackling local congestion. This could mean that an urban scheme would need to charge only from Mondays to Fridays, but could extend to some Saturdays, Sundays or Public Holidays depending on local conditions. In Durham city centre charges apply between 1000-1600 from Monday to Saturday, whilst in London they are levied between 0700-1830 from Monday to Friday. Conversely, a rural scheme might charge only at weekends and on Public Holidays to tackle a specific congestion problem caused by visitors to a particular area. Local authorities will also need to consider whether or not charges should be levied all year round - for example, charges at a popular tourist area might be needed only during the summer months. In all cases the availability of alternatives to the private car must be taken into account when deciding when charges should apply.

2.17 In light of the requirement that schemes must tackle congestion, DfT does not expect to see charges applied late in the evening or during the night but does not discount this possibility completely.

**Charge rates**

2.18 Local authorities should decide what charges meet the objectives of the planned scheme having regard to the reduction in congestion that is being sought. DfT does not intend to issue advice on levels of charges at present, but will consider doing so once the first schemes have been assessed.

2.19 A flat rate charge throughout the working day might be appropriate for some schemes, but elsewhere charges might be higher during the rush hour and lower during the rest of the day. Again, the practicabilites of varying charges across the day will depend on the type of scheme and whether a scheme is paper-based, cash-based, or electronic. The latter two options would offer much greater scope for introducing different charging strategies.

2.20 Where different rates of charge are proposed for different classes of vehicle, rather than a broadly flat-rate charge structure, the charges should reflect the contribution to congestion caused by different vehicles. The Secretary of State will not approve a scheme that charges vehicles out of proportion to the congestion that they cause. Whatever differential charge rates are proposed, they will need to be carefully justified and will be an important issue for consultation.

**Exemptions and other concessions**

2.21 Section 172 of the Act provides that exemptions or concessions from road user charges may be either:

- **national** - prescribed in Regulations by the Secretary of State or else enforced through the scheme approval process; or
• local - decided by individual charging authorities, and an important issue for consultation. (Local exemptions will always be additional to any national exemptions.)

National exemptions

2.22 The Government's response to its consultation paper 'Breaking the Logjam', said that national exemptions from road user charges would be kept to a minimum to give local authorities the flexibility to design schemes best suited to local needs. Ministers propose that national exemptions will be limited to fire, police and ambulance service emergency vehicles; licensed taxis; scheduled bus and coach services; and to some form of exemption or concession for disabled people.

2.23 DfT will make regulations setting out the national exemptions in due course. DfT will use the confirmation process to ensure that authorities include these exemptions in their schemes.

Emergency vehicles

2.24 The national exemption for emergency vehicles will cover emergency vehicles used by fire, police and ambulance services. These authorities have no control over when or where they have to send their vehicles. DfT intend that such vehicles will be exempt from charges at all times, whether on emergency calls or not.

2.25 Subject to further consultation, DfT proposes that the exemption should be based on the existing Vehicle Excise Duty (VED) exemption for emergency vehicles, but with the requirement that an appropriate body such as a NHS Trust or voluntary organisation must own the emergency vehicle. This should mean that motorists would not be able to claim an exemption if they drive, say, a decommissioned ambulance. Adopting the existing VED-based exemption should also help to make enforcement more straightforward as the registration details of VED-exempt vehicles are maintained on a DVLA database.

2.26 Some officers in the emergency services use their own vehicles in the course of their work or use 'unmarked' vehicles. These vehicles will not be included in the national exemption because to do so would present considerable practical problems. Charging authorities could, however, consider whether some form of exemption or concession is practical and cost-effective in the light of the objectives of their individual charging scheme. One possibility could be for the emergency services to make certified claims when an officer’s own vehicle is used for operational purposes.

Disabled people

2.27 The Government's response to 'Breaking the Logjam' proposed that there would be some form of national exemption or concession from road user charges for disabled people. The rationale for this is that some disabled people are often wholly reliant on car travel and therefore unable to switch easily to other modes of transport.

2.28 One option would be to use the Blue Badge as the basis for a national exemption. However, any exemption or concession based on personal entitlement, rather than in a specific vehicle, presents difficulties in balancing ease of use against the risk of misuse.

2.29 DfT is also considering whether an exemption or concession from charges for disabled people might apply where public transport and its associated infrastructure is fully accessible to the great majority of disabled people. Realistically in the next few years this is only likely to be achievable in small charging schemes. For example, in Durham the bus service which is supported by revenue from the road user charge and links the railway station to the city centre is fully accessible. For all schemes, full local consultation with disabled people and representative groups is very important.

Local exemptions

2.30 Authorities should consider the case for local exemptions or concessions in the design of their schemes, as these are likely to be a key issue in the consultation process. Their merits will need to be viewed in light of the objectives of the scheme and local circumstances. An authority must consider carefully whether a proposed exemption or concession is practicable and, in all cases, is:

- equitable and consistent, particularly as viewed by those who will not benefit. For example, it would be unacceptable to exempt delivery vehicles from one company but not another. If exemptions are perceived as unfair this could undermine public confidence and support for a scheme;

- enforceable. A complex system of exemptions or concessions will make effective enforcement more difficult;

- compatible with the scheme’s objectives, particularly its ability to tackle congestion. Widespread exemptions could reduce the impact of a scheme, distort its effectiveness or make it unworkable, or oblige authorities to set higher charges to achieve the requisite reduction in traffic.

2.31 The Secretary of State will take account of proposed local exemptions or concessions in the approval process for each scheme. He will not approve proposals to exempt the generality of a local authority’s vehicles simply because they are being used on local authority business. Such vehicles should be subject to the same constraints as would apply to equivalent vehicles operating in the private sector.

2.32 In general DfT would advise against adopting numerous local concessions or exemptions which will add to both the complexity of a scheme’s administration and its costs. However, the following are the sort of candidates which local authorities may consider when developing a scheme although there may be others:

Specialised emergency vehicles

2.33 DfT does not plan to include coastguard and mine or mountain rescue vehicles or similar in the national exemption for emergency vehicles. But charging authorities
that have such vehicles operating locally must consider providing them with a local exemption if appropriate.

**Motorcycles and scooters**

2.34 DfT takes the view that powered two wheelers should generally be exempt from charges, although it will consider proposals from authorities on their merits. There are practical difficulties with including powered two wheelers in some types of charging scheme – for example, it could be difficult to cater for automatic camera enforcement. However, although some motorists use motorcycles and scooters in an effort to avoid congestion, these vehicles can contribute to local congestion problems, and there are environmental and road safety issues with their use. Local authorities will want to consider these issues carefully in reaching a decision.

**Community Transport Schemes etc**

2.35 Authorities may wish to consider the case for an exemption or concession for Community Transport schemes, dial-a-ride services or social services transport which are providing essential transport for those unable to use conventional public transport.

**Bulldozer vans etc**

2.36 There is a case for exempting vehicles that pose security risks if they are required to stop at a barrier to pay a charge or to swipe a card to enter a charged area. Examples might include vans delivering cash to banks and vehicles used for transporting prisoners. An exemption on security grounds is less likely to be justified in electronic charging schemes.

**Rescue and recovery vehicles**

2.37 Authorities may wish to consider the case for an exemption or concession for rescue and recovery vehicles on the grounds that they help to reduce congestion by removing broken-down vehicles that can cause congestion, and that response times could increase as a result of their having to pay charges. As an alternative to an exemption, there might be a cap on the number of times that a charge is paid per day, or they could be issued with a discounted ‘season ticket’.

**Vehicles making deliveries and collections**

2.38 In many towns and cities congestion is a peak period problem caused mainly by car commuters, but the local business community will be concerned that their costs will increase or inefficiencies accrue if vehicles making deliveries pay charges. In many cases there will be little or no practical alternative to making a delivery by road. There may also be cases when deliveries can only be scheduled at certain times of the day, and/or may be further constrained by night time lorry bans. Authorities will need to take notice of the practical constraints and economic effects of charges on delivery vehicles. Authorities whose schemes operate during peak periods only may consider there is no case for an exemption or concession for vehicles making deliveries and
collections, especially if they are seeking to redistribute traffic to non-peak times. However, if a scheme operates throughout the working day, authorities might wish to consider a cap on the number of times that a charge is paid per day, or make discounted ‘season tickets’ available. If a night-time ban is in operation then an authority should review the effect of the ban in conjunction with the proposed charging scheme. It should consider making adjustments to the duration of the ban to provide a window of opportunity for deliveries to be made outside of the charging period, and also consider the effect of other restrictions on deliveries such as pedestrianisation schemes. Authorities will have to liaise closely with the local business community.

**Local businesses**

2.39 Depending on its objectives, a small scheme might include an exemption or concession for local workers or businesses based along a road where charges apply. However, DfT would not expect to see such an exemption in a large city centre charging scheme where car commuting by employees is one of the main targets of the scheme. In considering such exemptions and concessions authorities must consider the issue of state aid (see paras. 1.54–1.55).

**Car sharing schemes and high occupancy vehicles**

2.40 Car clubs and car sharing schemes allow cars to be used, for short periods or for specific trips, often within a defined city. The aim of these schemes is to help reduce car ownership and car dependency by providing a simple way for people to have access to a car when needed. Authorities that have such schemes in an area where charges apply may wish to consider the case for an exemption or concession, perhaps similar to any granted to taxis. To encourage car sharing, they may also want to consider an exemption or concession for vehicles that have more than one occupant, although the practicalities of enforcement could prove difficult.

**Local residents**

2.41 The merits of an exemption or concession for people who live in a charged area or on a road where charges apply will depend on the type of scheme and its objectives. Giving residents an exemption or concessionary ‘season ticket’ could encourage them to drive within the charged area, particularly if congestion is lower. Allowing residents a limited number of daily permits to give to visitors is another issue, which will depend on local circumstances and the objectives of the scheme.

**Approach to exemptions and concessions adopted in Durham and London**

2.42 The approaches adopted by Durham and London are instructive and reflect the differing nature of the two schemes and the areas involved. In Durham exemptions are provided for:

- permanent residents and, to a limited extent, their visitors;
- occupiers of premises only accessible from the roads for which a charge applies;
with the prior approval of the Council, authorised vehicles requiring access to Durham Cathedral or residents' premises in connection with a wedding, funeral, religious service etc;
any moped or motorcycle;
any vehicle designed or adapted for the carrying of securities to or from a bank, building society or post office;
any vehicle in the service of a universal service provider delivering or collecting postal packets;
any police, fire brigade, or ambulance vehicle on operational duties;
any powered wheelchair or scooter used by a disabled person.

In contrast, in London there is a range of both exemptions and concessions. Amongst the exemptions are:
bicycles, mopeds and motorcycles;
London licensed taxis and mini-cabs;
emergency service and NHS vehicles exempt from VED;
vehicles used by disabled persons and disabled passenger-carrying vehicles (e.g. Dial-A-Ride) that are exempt from VED;
PSVs with 9 or more seats licensed as buses;

and amongst the concessions are:
disabled persons and organisations in receipt of a Blue or Orange Badge do not have to pay the charge provided they register with TfL and make an initial one-off payment of £10;
drivers of certain alternative fuel vehicles do not have to pay the charge provided they register with TfL and make an annual payment of £10 per vehicle;
breakdown vehicles and specially adapted recovery vehicles;
vehicles such as works buses, community service buses, and mini buses belonging to schools, colleges, charities etc do not have to pay the charge as long as they are registered with TfL; and
residents in the charging zone are eligible to register one private vehicle for a 90% discount, subject to an annual payment of £10.

Enforcing charging schemes

[DfT intend in due course to consult on regulations setting out the enforcement, penalty charge and adjudication process. These will, in general, reflect the Regulations made for London and much of the detail of what follows will then be deleted.]

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2.43 Ministers attach considerable importance to fair and effective enforcement of road user charging schemes. In practice, the means of enforcement will depend to a large extent on the type of scheme and could include:

- use of self-enforcing methods such as barriers or bollards;

- visual/manual – with inspectors checking the validity of paper permits or electronic charging equipment in or on a vehicle. Such checks could be done on-street if vehicles are parked or have been stopped by a uniformed police officer working with the inspector;

- using either cameras or electronic communication with an on-board unit to record vehicle registration details as a vehicle enters a charged area or is driven on a charged road.

- Support from uniformed police officers.

2.44 Barriers or bollards are self-enforcing but are unlikely to be practical in any but the smallest charging schemes. Local Authorities should take account of DfT’s Traffic Advisory Leaflet and the Local Authorities Rising Bollard User Group (LARBUG) guidance on Rising Bollards. Durham County Council’s experience of using a rising bollard in Durham City to control the congestion charging zone would provide valuable lessons for any authority thinking of using this option.

2.45 Visual/manual enforcement is the main option for paper permit based charging schemes and could also be useful in some electronic charging schemes. An authority would need to appoint inspectors to check the validity of permits or use hand-held devices to interrogate electronic charging equipment fitted to vehicles. Where decriminalised parking enforcement has been introduced DfT recommends that local authorities consider using on-street parking attendants as inspectors for road user charges.

2.46 Camera or video-based enforcement is essential in a vehicle number-plate based scheme (including when motorists are billed retrospectively following recording of their vehicle registration details as they enter a charged zone) and in an electronic charging scheme. But even the simplest electronic charging scheme will need some visual/manual enforcement to ensure that motorists are not tampering with on-board equipment.

2.47 Under the Act non-payment of a road user charge is a civil matter, similar to the non-payment of a parking charge where on-street parking controls have been decriminalised. However, the Act specifies that interfering with equipment or documents used in a charging scheme, or obscuring a vehicle’s number plate, with intent to avoid payment or identification after not paying a charge is a criminal offence (section 173 of the Act, and see also sections 174 and 175). Prosecutions may be brought by the charging authority or by the police.

2.48 The procedure for issuing penalty charges for the non-payment of a road user charge will vary depending on the type of scheme. In general a penalty charge would be issued if:
• a driver refuses to pay a charge (for instance at a barrier such as employed in Durham);
• no road user charge has been paid at the time of travel or before a 'grace period' expires and a charge should have been paid (the approach in London); or
• if the charge paid was not correct for the class of vehicle concerned.

2.49 For paper-based charging schemes, the scheme Order may specify that failure to display the necessary permit will incur a penalty charge. Vehicles that are parked on-street can be checked by inspectors, or may be stopped with the help of the police for a spot-check. A penalty charge notice (PCN) will be attached to the vehicle or given to the driver if he or she is present.

2.50 The PCN process will broadly follow the decriminalised parking enforcement process. The PCN will need to:

• state the grounds on which it was issued;
• the amount of the penalty charge;
• where payment should be sent;
• provide the option of paying the penalty charge within 14 days at a discounted rate;
• state that if the PCN remains outstanding after 28 days, a "notice to owner" will be sent to the registered keeper of the vehicle; and
• make it clear that the notice to owner will set out procedures for making a representation to the charging authority, but that by making representations the registered keeper will forfeit the chance of paying the penalty charge at a discount.

2.51 If a PCN remains unpaid after 28 days, the notice to owner served on the registered keeper will need to state:

• the amount of the penalty charge;
• the grounds on which it is payable;
• where payment should be sent; and
• that if payment is not received or if a representation is not made to the charging authority, within 28 days following the issuing of the notice to owner, the outstanding charge, penalty charge and any surcharges will be registered as civil debts to be recovered through the county courts.

2.52 Where a debt is registered at the county court, the registered keeper of the vehicle should be sent a "service of charge" certificate to inform them that this action has been taken. As with decriminalised parking enforcement, authorities could have access to the Court Service's Parking Enforcement Centre (PEC) to handle recovery of road user charging penalty charges. The Centre Manager can be contacted at:

The County Court Bulk Centre, Northampton County Court, 21/27 St Katharines Street, Northampton NN1 2LH

Telephone: 08457 045007
Fax: 08457 078607
2.53 A different procedure will apply in schemes where a vehicle is captured on camera or where penalties are payable by drivers who have not pre-paid (or then fail to post-pay) the road user charge. In these circumstances, the PCN and the notice to owner should be sent as one document to the registered keeper of the vehicle. This document will state:

- the amount of the penalty charge;
- the grounds on which it is payable;
- where payment should be sent; and
- that if payment is not received or if a representation is not made to the charging authority, within 28 days following the issuing of the notice to owner, the outstanding charge, penalty charge and any surcharges will be registered as civil debts to be recovered through the county courts. The registered keeper should be offered a discount if the penalty charge is paid within 14 days.

2.54 When camera-based enforcement is used, authorities may want to consider a post-payment facility for motorists who did not have the opportunity to pay the charge before undertaking their journey. This could be, for instance, a telephone hotline or internet site enabling motorists to pay a charge that is due up to, say midnight on the day in question, or on the following day. Authorities may want to add a surcharge to cover administrative costs. Motorists who had not paid an outstanding road user charge within the permitted grace period would incur a penalty charge. The central London charging scheme provides an example of this facility.

**Penalty charges**

2.55 DfT proposes that authorities should be able to decide what penalty rates are appropriate for their individual charging schemes. For example, penalty charges could be a multiple of the road user charge that was not paid or relate to the equivalent penalty for illegal parking where on-street parking restrictions have been decriminalised.

2.56 Penalties should be set at levels sufficient to deter the non-payment of a charge without being disproportionate to the size of the charge. The basic penalty could be discounted by, say, 50% if paid within 14 days, and increased by 50% if paid after a service of charge certificate had been issued following registration of the outstanding debt in the county court. For simplicity, DfT recommends that recovery of an outstanding road user charge is not pursued separately once a PCN or notice to owner has been issued - effectively the outstanding road user charge should be subsumed within the penalty charge.

2.57 Charging authorities that make use of wheel clamping or vehicle removal powers will also need to set the charges that will apply in these cases. DfT recommends that these should follow those currently specified for decriminalised parking enforcement. However, DfT recommends that clamping or towing away should only be considered for repeat offenders with a number of outstanding penalty charges. Clamping or towing away may be carried out even where a vehicle is not in contravention of the charging scheme at the time it is clamped or towed away.
2.58 For simplicity, DfT recommends that a charging authority should not issue
different penalty charges for failure to pay a charge at all or failure to pay the correct
charge. Similarly, DfT does not recommend higher penalty charges for drivers who
repeatedly fail to pay road user charges. But it is willing to consider proposals from
local authorities on their merits. In all cases penalty charge rates should be consulted
on and written into the scheme Order.

2.59 The Act provides that the registered keeper of a vehicle is liable to pay penalty
charges, unless regulations say otherwise. The enforcement regulations will provide
for the transfer of liability where the registered keeper of a vehicle is a vehicle hire
company and the vehicle is the subject of a valid hiring agreement. They will also
transfer liability where the vehicle is leased or loaned to somebody. It will be the
responsibility of the registered keeper of a vehicle to ensure that the vehicle is subject
to a valid hiring agreement, lease or loan so that the person who takes responsibility
for the vehicle is also responsible for any charges and penalty charges.

2.60 The Regulations will also ensure that if a vehicle is taken without the
registered keeper’s consent and the police have been informed, the person who took
the vehicle will be liable for any charges and penalty charges.

2.61 Revenue from penalty charges should be paid into the same ring-fenced
account as that for the revenue from road user charges. Enforcement costs will be met
from gross revenues.

Appeals and adjudication

2.62 All schemes will need to provide an appeals procedure and an independent
adjudication process. This will ensure that enforcement is fair, acceptable to the
public and complies with human rights legislation. The cost of the appeals and
adjudication process will be one of the operating costs of the charging scheme.

2.63 The appeals and adjudication arrangements will follow the two-stage appeals
process for decriminalised parking enforcement outside London. In the first instance,
this will provide for an appeal to the authority that, for example, refused the grant of
an exemption or issued a penalty notice. If a dispute is not resolved at this stage there
will be the right of appeal to an independent adjudicator.

2.64 DfT believes this approach is right because the issues that are likely to arise at
appeal and adjudication, and the sums of money involved, will be similar to those for
decriminalised parking enforcement. As with the latter, it will be necessary to have
issued a ‘notice to owner’ to the registered keeper of a vehicle before an appeal can be
made. Any appeal will involve losing the opportunity to pay a penalty charge at a
discounted rate if the appeal is not upheld.

2.65 There is one significant difference from parking appeals in that it is envisaged
that the adjudicators will be appointed by the Lord Chancellor rather than by a
committee of participating authorities. DfT will discuss with the National Parking
Appeals Service (NPAS) whether it will be willing to provide administrative support