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31 October 2011

Sent by email: lane.rental@dft.gsi.gov.uk

Dear Tony

**Department for Transport Consultation
New Roads and Street Works act 1991 – Lane Rental Schemes in England**

I am writing on behalf of the National Joint Utilities Group Ltd. (NJUG), the UK's only trade association representing utilities and their contractors solely on street works matters.

Our focus is on promoting best practice, self-regulation and constructive two-way relationship with Government and other relevant stakeholders. We are also the utility arm of the national Highway Authorities and Utilities Committee (HAUC(UK)), which brings together local authorities and utilities from across the UK, together with the UK Government and Devolved Administrations, to raise standards of roads and street works. We are therefore very pleased to have the opportunity to comment on this consultation.

Our response comments on the suite of consultation documents, including the Consultation Document, the Guidance, the Regulations, and the Impact Assessment (where we have a number of major concerns), and follows the format of these documents. It comprises:

- This covering letter.
- Detailed Commentary - including Executive Summary and Detailed Points.
- Response to the specific consultation questions.

NJUG is yet to be convinced that lane rental will deliver substantial benefits over and above the myriad of existing legislation, regulation and voluntary initiatives already available to manage street works. NJUG's view is that greater consistency and effectiveness in implementing these existing measures would deliver the same objectives at much less cost to utilities and their customers.

Additionally, as recognised by the GLA Transport Committee, at a time when there is mounting consumer and political concern about the level of utility bills and the impact on hard pressed families and businesses, it is perverse for Government to be proposing policies that will inevitably result in increases in utility bills for little or no proven benefit.

However, if Government remains intent on introducing lane rental, then NJUG is committed to working constructively with the Department for Transport (DfT) and

Transport for London (TfL) to seek to develop regulations which are fair, robust, workable and do not place unnecessary burdens on utilities and their customers.

NJUG believes that any lane rental scheme should be:

- **Fair and equitable**, applying to all works, including both utility and authority works. NJUG believes that if Government is serious about reducing disruption then it needs to require any lane rental scheme to apply equally to highway authority works, which account for around 50% of works in the street.
- **Targeted** - Based on a 'volume of traffic-based' criteria (higher than, and distinct from the definition of traffic-sensitive streets) laid out in the Regulations, and which targets only those pinch points on strategic roads with very high traffic densities and in cities where there are significant numbers of pinch points e.g. London.
- Operated on an **incentive and avoidable basis**.
- **3-tiered (as advocated by London First)** - With lane rental applying to the busiest streets; permit fees applying to other busy A roads; and the smaller B roads / backstreets not attracting any fees, thus allowing prioritisation on those roads where congestion is greatest.
- **The intention of the scheme should be to avoid disruption on the busiest streets** – If the streets subject to lane rental are carefully selected, and small in number, NJUG believes a successful outcome would be that any lane rental scheme generates no or minimal revenue. However, any revenue raised should be ring-fenced and invested into the development of new approaches that reduce disruption.

In addition, there are several key areas of concern, which NJUG wants to highlight:

Health and Safety of Workforce and the Public

There will be circumstances where it is not safe to work in the evenings / at night, and it is vital that the Regulations / Guidance spell out that local authorities must not place undue pressure on utilities to work out-of-hours it would be unsafe to do so.

Environmental Health constraints

The whole premise of the lane rental scheme is that works can be moved from the most traffic-sensitive times to evenings / overnight. However, the potential for Environmental Health Officers to prevent or restrict out of hours working due to noise constraints could significantly hamper this objective.

This coupled with the proposed lane rental proposals, is likely to have a significant impact on operational efficiency, costs and duration of works. The TfL consultation makes an assumption that working before 8pm on targeted roads will generally incur a lane rental charge, yet also states that for environmental health reasons it is possible that working after 11pm may be precluded. In these instances, utilities would have just 3 hours per night to undertake work, which would extend durations and increase costs.

NJUG therefore strongly recommends that where an Environmental Health Officer prevents works taking place at night, there should be an exemption from lane rental charges.

Additional Utility, Customer and Community Costs

The current Impact Assessment does not recognise that in avoiding the lane rental charge, utilities (and highway authorities) will incur significant additional costs (additional labour costs of out of hours working and the cost of purchasing and laying and removing plates, which will eat into the efficiency of a job). These costs will inevitably be passed on to the customer, which will further increase energy, water, telecommunications (and council tax) bills.

Equally, the Impact Assessment fails to recognise the potential additional disturbance to residents / businesses of evening / night working. No account has been taken of the financial / social benefit of utility works or of the impact of out-of-hours" working on residents (issues of lost amenity; noise; light; increased traffic etc.)

This point has also been highlighted by the GLA Transport Committee, and it is also worth recognising that if lane rental delivers additional benefits in terms of reduced disruption, then this will benefit motorists who are usually passing through these thoroughfares, but the lane rental charges will be paid for by the residents and businesses who live in the communities where it applies, and who will potentially face additional disturbance / longer duration works through night-working or using of plating.

Double Jeopardy

NJUG is very concerned that as currently drafted, utilities could be faced with both lane rental and S74 overstay charges if a job unavoidably runs over. Applying both lane rental and S74 charges would disproportionately increase utility costs (particularly if S74 is increased still further), and NJUG strongly believes on roads where lane rental applies, then S74 (and permit fees) should not apply.

We hope that the attached response is useful to the Department in their deliberations. NJUG remains committed to working with DfT and TfL, and would welcome the opportunity to discuss our response further with you. In the meantime, if you have any specific queries regarding the attached, please do not hesitate to contact me, or in my absence Jane Smith on 020 7340 8737.

Yours sincerely



Les Guest
CEO, National Joint Utilities Group Ltd

**Department for Transport Consultation
New Roads and Street Works Act 1991 – Lane Rental Schemes in England
National Joint Utilities Group Ltd (NJUG) Detailed Commentary**

1.0 Introduction

This response is submitted on behalf of the National Joint Utilities Group Ltd. (NJUG), the only UK industry association representing utilities and their contractors solely on street works matters. NJUG's represents the vast majority of electricity, gas and water companies and two of the biggest telecommunications companies, as well as most of the major contracting organisations who undertake street works. As you are aware, we are also the utility arm of the national Highway Authorities and Utilities Committee (HAUC(UK)).

For ease of reference, this Detailed Summary document follows the format of the suite of DfT Lane Rental Consultation documents – the Consultation, the Guidance, the Regulations and the Impact Assessment, and should be read in conjunction with NJUG's covering letter and response to specific consultation questions.

2.0 Executive Summary

2.1 Overview

As you know, NJUG remains unconvinced that lane rental will deliver additional benefits over and above the myriad of legislation / regulation and the voluntary initiatives that already apply to street works, and does not believe that the accompanying Impact Assessment adequately demonstrates a) the total costs which utilities would incur and b) the additional benefits which would arise.

NJUG believes that these benefits could be better achieved at far less cost by everyone working together harder in using the existing regulatory and voluntary initiatives consistently and effectively.

NJUG is concerned that at a time when there is mounting consumer and political concern about the level of utility bills and the impact on hard pressed families and businesses, it is perverse for Government to be proposing policies which will inevitably result in increases in utility bills for little or no proven benefit. Even the strongest advocates of lane rental recognise that it will increase utility bills, whether utilities pay the lane rental charges or incur additional costs (see below for detail) in doing so – and NJUG has real concerns that the true cost to hard pressed families has been seriously underestimated.

This has been highlighted by the GLA Transport Committee, who call on Government to ensure that economic regulators have sufficient powers and that if bills go up the benefits of the scheme justify this. It is worth emphasising that economic regulators' primary duty is to protect the consumer, but if lane rental charges, or the cost of avoiding them, becomes a cost of undertaking street works, regulators will allow efficiently incurred costs to be passed through to the customer. Equally, domestic or business consumers requiring a new gas, water, electricity or telecommunications connection within a lane rental area will see a dramatic increase in the connection costs, and this will create a large cost differential from those businesses / residents who live outside lane rental areas.

But, if lane rental is to be implemented, NJUG remains dedicated to working constructively with the Department for Transport (DfT) and Transport for London to seek to develop

regulations that are fair and workable and do not place unnecessary burden on utilities or their customers. NJUG therefore believes that any scheme should be:

- **Fair and equitable** – and must apply to all works, including both utility and authority works if it is to be effective. **NJUG believes that if Government is serious about reducing disruption then it needs to require any lane rental scheme to apply equally to highway authority works, which count for around half of all works undertaken in the street.**
- **Targeted only at pinch points on strategic roads** - NJUG believes that the regulations should include defined criteria to ensure that lane rental applies to only those streets where there are very high traffic densities, in cities where there are significant numbers of pinch points e.g. London.
- **Operated on an incentive basis** - Utilities and highway authorities should be incentivised to work outside traffic sensitive times and to use techniques such as plating to return the road to service where safe and appropriate to do so, in return for avoiding a lane rental charge.
- **3-tiered approach (advocated by London First)** – With lane rental applying to the busiest streets; then permit fees applying to other busy A roads; and the smaller B roads or backstreets not attracting any fees at all – thus allowing prioritisation on those roads where congestion is greatest.
- **The intention of the scheme should be to avoid disruption on the busiest streets – If the streets subject to lane rental are carefully selected and small in number, the** a successful outcome would be no or minimal revenue from any lane rental scheme. However, NJUG believes that any revenue raised must be ring-fenced and re-invested into the development of innovative techniques that reduce disruption, over and above normal highways budgets, and that this must be confirmed within the regulations.

Utilities, on behalf of their customers who ultimately will bear the cost, should contribute to the decision on how funds are used, with income from the two initial schemes potentially combined to make optimum use of innovative research & development to reduce disruption.

In addition to the above general comments there are several major areas of concern, which NJUG wants to highlight:

2.2 Key Concerns

Health and Safety of the Workforce and the Public

There may be circumstances where working during evenings or at night may endanger operatives or the public (our Detailed Summary provides examples) and in those cases it is vital that local authorities do not unduly pressurise utilities to undertake such works out-of-hours.

NJUG therefore recommends that the Regulations / Guidance are amended to prevent local authorities exerting undue pressure on utilities to undertake work out-of-hours when it to do so would be unsafe, and that if utilities can demonstrate working during the evening or at night would be unsafe, the works should be exempt from lane rental charges and every effort should be made by the local authority and the utility(s) to reduce disruption.

Environmental Health constraints

As proposed, the lane rental scheme is designed to encourage the movement of works from peak times to evenings / overnight. Whilst the relevant Highway Authority may wish works to take place outside normal hours, Environmental Health Officers may well prevent or restrict works due to noise constraints, which will have a fundamental impact on utilities' (and highway authorities') ability to avoid the lane rental charges.

Indeed, the TfL consultation makes an assumption that working before 8pm on targeted streets will generally incur a lane rental charge, yet also states that for environmental health reasons it is possible that working after 11pm may be precluded. Additionally, some streets are deemed traffic-sensitive on a 24 hour basis during the working week, with only limited access at weekends too. Both of these issues will have a significant impact on operational efficiency, costs, and duration of works, which would be extended considerably by only having 3 hours per night to undertake work.

Additionally, even where Environmental Health Officers grant permission for works to take place through the night, **there will still potentially be additional disturbance for residents and businesses, which is not currently recognised. No account has been taken of the financial / social benefit of utility works or of the impact of out-of-hours working on residents (issues of lost amenity; noise; light; increased traffic etc.)**

Recommendation: Again, this has been highlighted by the GLA Transport Committee, and NJUG therefore recommends that in cases where an Environmental Health Officer prevents works taking place at night, there should be an exemption from lane rental charges, and utilities and local authorities should work together very closely to seek to minimise the disruption from the planned works.

Additional Utility, Customer and Community Costs

If lane rental is to be implemented, NJUG supports an incentivised avoidable scheme which applies to all works promoters who work in targeted streets during lane rental times. However, the current Impact Assessment does not recognise:

- That in avoiding the lane rental charge, all works promoters would incur significant additional costs (additional labour costs of out of hours working and the cost of purchasing, laying and removing plates, which will increase durations impacting on the efficiency of a job.
- It is inevitable that these additional costs will be passed on to consumers – either directly (customer connections – see below) or indirectly through utility bills. At a time of widespread concern over energy and other utility bills, NJUG is concerned that these proposals will further contribute towards increased costs for consumers.
- Given the potential constraints to 3 hours per day, it is inevitable that utilities would in many cases have to incur lane rental charges. Equally, some processes will make avoidance of lane rental charges impossible e.g. 7 day concrete-curing. This will result in exponential increases to the prices of routine connections for domestic or business customers requiring gas, electricity, water or telecommunications connections, which would turn a 3-day £800 connection job to potentially an £8,300 job.

Impact Assessment

NJUG wishes to highlight that the Impact Assessment:

- **Does not adequately demonstrate that there will be substantial additional benefits, over and above the myriad of existing legislation / regulation that already exists to manage street works.** Please see Section 6 for detailed comments.
- Does not recognise the benefits delivered by the London Code of Conduct, which saved 2311 days of disruption in its first two years, nor the perceived and possible benefits delivered by permit schemes which need to be independently quantified and exhausted by any prospective lane rental scheme applicant before they consider or submit an application.

Currently, NJUG believes, in the absence of an accurate assessment of the various existing street works provisions and voluntary measures and their impact / costs, there is a strong risk that it will be difficult to differentiate between any likely prospective benefits attributable to proposed lane rental schemes and the existing regulatory and voluntary measures.

- Should not only recognise the potential benefits to road users, but should reflect:
 - Overall public needs – including for timely, reliable and affordable utility services.
 - The potential for increased disturbance to residents and businesses from night-working.
 - The additional financial / social costs to utilities and highway authorities of night-time working / application of innovative methodologies to return the road to service, such as plating.

Fair and equitable

As drafted, the DfT regulations do not require lane rental schemes to apply equally to both utilities and highway authorities - only that local authorities are “*strongly encouraged to apply lane rental charges to their own highway works*”.

NJUG strongly believes that it is essential that primary legislation is amended to reflect that lane rental must apply to all works promoters equally. The documents refer to “*statutory*” or “*street works undertakers*”, rather than “*all works promoters*” and we recommend this is changed.

Government states that it is determined to reduce the adverse impact of works in the street - therefore NJUG believes if Government is going to change primary legislation to facilitate the devolvement of permit scheme approvals, then they should also use the opportunity to apply lane rental charges to all those who work on targeted streets, and therefore contribute to disruption and congestion, including highway authority works.

Finally, it is worth recognising that if lane rental delivers additional benefits in terms of reduced disruption, then this will benefit motorists who are usually passing through these thoroughfares, but that lane rental charges will be paid for by the residents and businesses who live in the communities where it applies, who will also potentially face additional disturbance / longer duration works through night-working or using of plating.

Wrong Behaviours

NJUG is very concerned to ensure that the Regulations do not inadvertently encourage the wrong behaviours:

- Utilities have a statutory duty to respond to emergencies within specified times, for good safety and environmental reasons.

- Equally, the Network Management Duty places a duty on local authorities to do everything reasonably possible to ensure expeditious movement of traffic / pedestrians on their network. This includes responding in a timely way to any failures on the road network, due to accidents, incidents or failure of traffic management equipment.
- Immediate emergency and immediate urgent works cannot therefore be planned to only be attended to out of hours, and so utilities (and highway authorities) would be unable to avoid the charge.
- **NJUG therefore strongly believes that lane rental charges should not apply to immediate (emergency and urgent) works, or at the very least, that they should be exempt for the first 24 hours to address the emergency or restore service, and then plan the remaining repair out of hours.**

Double Jeopardy

NJUG is very concerned that as currently drafted, utilities could be faced with both lane rental and S74 overstay charges if a job unavoidably runs over.

Utilities are already incentivised by economic regulation or customer demands to undertake works as efficiently as possible. S74 has already been very effective in reducing durations of works, with TfL indicating that 98% of works are completed within the agreed timescales.

Applying both lane rental and S74 charges would disproportionately increase utility costs (particularly if S74 is increased still further), and NJUG strongly believes that if lane rental applies, then S74 and permit fees should not apply.

2.4 Key Areas which NJUG supports

NJUG do not believe that lane rental will deliver substantial additional benefits over and above existing legislation / regulation. However, if Government are intent on implementing lane rental, NJUG supports the following:

- The main aims of the proposed lane rental scheme:
 - As an incentive to reduce significant disruption.
 - Must be well designed and well-targeted, focused on the most critical parts of the highway network.
 - Charges to apply only at the busiest times, encouraging optimum level of resources outside peak hours.
 - No charges if the highway is opened at peak times.
 - To be trialled by two authorities – with Paragraph 2.2 confirming that it is intended that lane rental will be “*pioneered in only one or two places, with experience from those places informing future decisions on whether lane rental should play a wider role,*” and that “**lane rental pioneers will be approved only if it can be shown that every opportunity has been taken to achieve the desired results through other less costly means, including a permit scheme.**”
 - That any authority applying to operate a lane rental scheme must have operated a permit scheme first.
- **Pre-approval Evaluation and Review (Paragraph 4.18 of the Guidance document)** – which provides a sound basis / baseline for a lane rental scheme before approval.
- **Post-Evaluation after One Year** - Although NJUG strongly believes that:
 - The first two schemes should be reviewed by DfT or an independent body to ensure that the respective costs and benefits are clearly identified.

- The trials must produce factual data which assesses the total relative costs and benefits.
 - Consideration of any other schemes must be based on substantiated need, and only if the first two schemes demonstrate significant additional benefits a) over and above the existing legislation and b) that the additional benefits significantly outweigh the very considerable costs that will be incurred by works promoters.
 - Criteria should be developed against which the lane rental trials can be assessed, and should include a) the number of days disruption saved, b) the level of revenue generated (with significant revenue being a sign of ineffectiveness) and c) the level of additional costs to works promoters in paying or avoiding lane rental charges, and d) the additional costs / disturbance to residents and businesses of increased night-time working.
- **Introduction of sunset clauses** – NJUG strongly welcomes the inclusion of sunset clauses within the Regulations. However, given the significant additional costs that utilities and highway authorities will incur (one way or another) we believe that 7 years is too long a period if the Lane Rental Regulations do not deliver very considerable benefits that outweigh them. NJUG believes that a 3 year period is more appropriate, allowing sufficient time for lane rental to ‘bed in’, and its impacts to be analysed.
 - **TfL’s substantiated proposal for only 3% of the London Network** - which reflects the objectives of the DfT’s proposals to target only the most critical parts of the road network, albeit this still equates to over 50% of the Transport for London Road Network.

If such a level of roads were reflected in other schemes, then this would have an even greater impact on works promoters’ costs and operational efficiency.

Recommendation: NJUG therefore recommends that any proposed must a) specify the percentage of the network to which lane rental will apply, and b) there should be defined criteria based on high traffic-densities, below which lane rental charges will not apply.

3.0 Detailed Commentary

The format of this commentary follows the headings and numbering of the suite of consultation documents, which we hope is helpful.

3.1 *Commentary on the Consultation Document*

3.1.1 Introduction

Paragraph 1.2 – NJUG welcomes the recognition that utility and highway authority works are both necessary and essential, and that utilities and highway authorities each undertake approximately 50% of the total works across England each year. However, as previously requested, we would welcome sight of the statistical analysis that underpins the estimated cost to the economy of congestion as £4 billion per annum the economy.

Paragraph 1.3 – We support Government’s determination to reduce the adverse impacts of all works on the street, however NJUG would make the following points:

- **Statutory duties on those undertaking works** – NJUG, along with colleagues from the Joint Authorities Group (JAG(UK)) under the auspices of the Highways and Utilities Committee UK (HAUC(UK)), have long supported enhanced standards of safety and training and accreditation, and have worked tirelessly to develop the Safety

and Training and Accreditation Codes of Practice, including the 5-year mandatory re-assessment of operatives.

In respect of reinstatement of the highway, HAUC(UK) has formed a Reinstatement / Coring Group to assess the reasons for road degradation, and spread good practice - including training to ensure good quality reinstatements.

- **Statutory powers for highway authorities** – NJUG continues to believe that the range of existing regulatory powers, if applied consistently and effectively, with highway authorities and utilities working together, would deliver all the necessary improvements the Government are seeking.
- **Financial incentives** – Since its introduction S74 has delivered a step-change in reduced durations, and has been so successful that TfL report that 98% of works on their network comply with the agreed durations, and Kent County Council reporting 96% compliance.

Gas, water and electricity companies are incentivised through their regulatory settlements to undertake works in an efficient manner. Equally, telecommunications companies face similar pressures from customers to be efficient. However, through the introduction of the NJUG *Vision for Street Works*; London Code of Conduct; and its wider implementation through the NJUG / HAUC(UK) Codes of Conduct, utilities have recognised the need to further reduce disruption, and regularly agree with highway authorities to work out-of-hours on the busiest routes, where safe and practical to do so.

There is no recognition within the Impact Assessment of the increase in out-of-hours working resulting from these initiatives, including in particular the London Code of Conduct which reports a considerable increase in out-of-hours working. Additionally, the benefits from permit schemes are not mentioned.

Recommendation: NJUG therefore recommends that the Impact Assessment should expressly quantify and therefore exclude from the benefits it attributes that will be forthcoming from lane rental schemes, the benefits of all existing regulatory and voluntary initiatives.

- **Non-regulatory measures** – NJUG has been instrumental in introducing a range of voluntary measures to raise standards and reduce disruption, and continues to drive further improvement through the HAUC(UK) Code of Conduct; the NJUG Awards and resultant case studies; and stakeholder events and workshops to share good practice.

Paragraph 1.4 – Makes reference to *“well-designed and carefully targeted lane rental schemes”*, which if lane rental is to be implemented, NJUG would prefer. However, it then goes on to describe lane rental as a scheme that *“would involve undertakers paying a daily charge for the duration of their works.”* As above, NJUG strongly believes that lane rental must apply to all works promoters, and not just to utilities who undertake only around 50% of the works in the street.

Delivering a reduction in the adverse impacts of works in the street – NJUG believes that if Government is truly determined to reduce the adverse impact of works in the street, it must take the opportunity to amend primary legislation to apply both current and any future legislation / regulation to all works promoters, including highway authority works which account for around 50% of the works undertaken in England.

Paragraph 1.5 – Whilst NJUG welcomes the acknowledgement that highway authorities’ own works also cause substantial disruption, as above, we are disappointed that the Government have not proposed true parity by requiring lane rental to apply equally to both utility and highway authority works. Whilst we recognise that this will require a change in primary legislation, given that Government is exploring the option of doing this for devolvement of permit scheme approval powers, we strongly urge Government to use a similar opportunity to also apply lane rental and the existing street works regulations to highway authority works.

Paragraph 1.7 – We welcome Government’s change in approach to target lane rental at *“the most critical parts of the road network”* and the statement that *“any future schemes will need to target just the specific streets or parts of street where works cause the greatest level of disruption, and will apply charges only in respect of works that occupy the highway at the busiest times.”*

In order to deliver this objective, it is vital that:

- The regulations include defined criteria, based on high traffic-sensitivities, with an agreed volume of traffic per hour, below which lane rental will not apply.
- Any methodology to apply charges only at the busiest times needs to be simple and easily and cost-effectively administered.

Paragraph 1.8 – NJUG welcomes Government’s recognition that lane rental is not yet proven as a successful model, and therefore Government is looking to approve only one or two initial lane rental schemes. We also support the statement that *“early evidence from such schemes would inform decisions on whether lane rental could usefully be applied more widely.”*

NJUG strongly supports the trialling of one, or two, lane rental schemes, which we believe should have full independent assessment of total costs and benefits, prior to any consideration of any further roll-out.

3.1.2 Issues for consultation

Purpose and key principles of lane rental

Paragraph 2.1 – Whilst supportive of the intention to provide guidance setting out Government’s rationale for considering lane rental schemes, NJUG is disappointed that this paragraph refers only to providing examples of *how “street works undertakers might adapt their working practices to reduce disruption in response to well designed and carefully-targeted schemes”*. **NJUG strongly believes that for lane rental to deliver any additional benefit it must apply equally to both utility and highway authority works.**

However, within our overall views on lane rental, NJUG does welcome Government’s confirmation that future schemes need to be:

- **Targeted** – i.e. focused only on those critical parts of the highway network where street works cause the greatest disruption – **again, the reference here should be to “road and street works”, or “works in the street”**.

Recommendation: NJUG strongly believes and recommends that there should be criteria set for identifying the streets to which lane rental might apply, based on an agreed volume of traffic per hour. This will ensure that the *“critical parts of the highway network”* to which lane rental might apply, are identified based on the busiest streets with the highest volumes of traffic.

- **Avoidable** – i.e. designed in a way that enables undertakers (**should read “all works promoters”**) to reduce or avoid their exposure to charges by carrying out their works in a less disruptive way.

However, as previously stated, **it is vital that Government recognises and takes account of the additional costs that both utilities (and highway authorities) will incur in undertaking works outside normal hours, or using innovative techniques, such as plating, to return the road to use during busy times. These are not currently included within the Impact Assessment, which should be amended accordingly.**

Paragraph 2.2 – NJUG particularly welcomes Government’s confirmation that:

- It is intended that lane rental will be *“pioneered in only one or two places, with experience from those places informing future decisions on whether lane rental should play a wider role.”*
- *“lane rental pioneers will be approved only if it can be shown that every opportunity has been taken to achieve the desired results through other less costly means, including a permit scheme.”*

This is vital and **NJUG would also recommend any local authority applying to operate a lane rental scheme should be required to quantify the total costs and benefits of the existing measures they have implemented (including utility costs and benefits), and the total additional costs and benefits of operating a lane rental scheme.**

3.1.3 Highway Works

Paragraph 2.3 – NJUG welcomes the recognition that highway authority works also cause significant disruption for road users and local communities. Indeed it is recognised that across England utilities and highway authorities account for approximately 50% each of all works in the street.

Paragraph 2.4 – NJUG also strongly welcomes the statement that *“lane rental will be most effective in reducing disruption if the same charges are applied to highway authorities’ own works.”*

We therefore strongly urge Government to change the primary legislation to require any lane rental scheme to apply to both utility and highway works on the targeted roads.

3.1.4 Scope of lane rental schemes

Paragraph 2.5 – NJUG notes that Government considers that *“highway authorities should have discretion to determine which streets and works should be covered by lane rental charges, but that some constraints should be set out in Regulations.”*

NJUG supports setting out constraints in Regulations, which should include robust criteria based on high traffic densities, with an agreed threshold of a high volume of traffic per hour (to ensure targeted streets are only those that are the busiest, where congestion is greatest, and where works on the street during busy times would cause considerable disruption).

NJUG also welcomes the development of guidance for highway authorities and their proposed schemes, and that any proposed schemes that are inconsistent with it would

need to demonstrate genuinely exceptional reasons why, in order to secure the Secretary of State's approval. **However we would strongly advocate that any Guidance is statutory.**

Paragraphs 2.6 to 2.8 – NJUG agrees with the proposed exemptions listed in this Paragraph, Chapter 3 and the Regulations, and in particular that:

- As a minimum, charges would only be permitted on traffic-sensitive streets when works occupy them during the busiest times, but that this on its own would not be sufficient to justify inclusion of a particular street within the scope of a lane rental scheme.
- To secure Secretary of State approval, proposed schemes would need to be carefully targeted on the most critical parts of the authority's road network.
- Authorities would need to adopt an evidence-based approach to identifying those critical parts of the network.

However, as before, NJUG believes that defined criteria, based on high traffic densities, needs to be included in the Regulations. These criteria should be based on a high volume of traffic, to ensure that only the very busiest roads with the highest levels of congestion are subject to lane rental charges, and that they only apply at traffic-sensitive times, and can be avoided by either undertaking the works out-of-hours or returning the road to service during peak times by use of innovative techniques such as plating.

Paragraph 2.9 – Consistent with NJUG's view that if lane rental is to be implemented, charges should apply to all authority works (as well as utility works) which take place on the targeted streets during the targeted (traffic-sensitive) times, NJUG believes that, in those circumstances, lane rental should apply to diversionary works carried out by all works promoters, but only if the regulations are re-written to make those responsible for the Major Highway Works, Major Bridge Works or Major Transport Works (the scheme promoter) to be directly responsible for the full payment of any lane rental charges. Lane rental charges should be excluded from the allowable costs associated with the Street Works (Sharing of Cost of Works)(England) Regulations 2000).

This is vital because:

- Ultimately, in the case of diversionary works, the overall scheme promoter is the works promoter, and utilities (statutory undertakers) are acting as a 'contractor' within the boundary of the scheme.
- Statutory undertakers recharge all costs (minus any discounts for payment of costs upfront by the scheme promoter) to the scheme promoter, who is requiring the diversion of utility apparatus to take place. Even when discounted to 18% or 7.5%, lane rental costs would add substantially to the utility cost burden associated with diversionary works, as the timing and duration of works are subject to the directions placed upon the utility by the works promoter.
- In respect of lane rental charges, we do not believe there would be any benefit in upfront payment by the scheme promoter of lane rental charges, and equally, statutory undertakers should not be penalised by having to pay a contribution to lane rental charges arising from works that are only needed to facilitate Major Highway Works, Major Bridge Works or Major Transport Works

3.1.5 Lane rental charges

Paragraph 2.10 – We welcome the:

- Requirement for local authorities to have to fully justify the proposed level of charges (up to a maximum of £2500) with a robust cost-benefit analysis.
- The statement *that “it will not be acceptable for scheme promoters simply to apply the maximum charges without clear justification.”*
- The recognition that *“this is necessary because to the extent that costs of lane rental cannot be avoided by utility companies acting efficiently, regulators are expected to make an allowance for those costs when setting overall price caps.”*

However, as drafted, this last statement is not factually accurate, as the charges can be avoided by not working in traffic-sensitive times. Therefore we suggest rewording to recognise this, as follows:

*“this is necessary because to the extent that costs of lane rental cannot be avoided **(either by paying or avoiding lane rental charges)** by utility companies acting efficiently, regulators are expected to make an allowance for those costs when setting overall price caps.”*

Paragraphs 2.11 & 2.12 – NJUG supports confirmation of the areas outlined that scheme promoters would need to satisfy the Secretary of State, including that any proposed charges must provide an effective incentive to adopt less disruptive working practices. This is particularly important, given that utilities are already incentivised to work efficiently through their economic regulatory settlements or through customer pressure on prices / demands for services.

Paragraph 2.12 – Goes on to state that Government considers that if the level of charge needed to secure the desired behavioural changes from undertakers is higher than the cost of the adverse impacts of their works, then the lane rental charges are unlikely to be justified, which is because *“the costs to undertakers (and ultimately to their consumers) of behavioural change would be greater than the benefits arising from that change”*.

Whilst NJUG welcomes the overall thrust of Paragraphs 2.11 & 2.12, we:

- **Are again concerned over the reference to “undertakers” rather than “all works promoters.”**
- **Would like to highlight that in order to fulfil customer requirements, especially new connections within the required timescales, there may be times when utilities will have no option but to pay the lane rental charges and work during the day.**

Paragraph 2.13 – As per our previous comments, NJUG is very concerned about the potential for double jeopardy, with works promoters potentially facing both lane rental and S74 overstay charges if a job inadvertently overruns. NJUG believes that this would be disproportionate and that either daily charge is a more than sufficient incentive on its own.

Recommendation: NJUG strongly believes that where lane rental charges apply, S74 overstay charges (and indeed permit fees) should not apply and therefore recommends that the Regulations are amended to reflect this.

3.1.6 Process for developing lane rental schemes

Paragraph 2.14 – See our comments on the guidance and answer to Q7.

3.1.7 Applications to the Secretary of State

Paragraphs 2.15 & 2.16 – NJUG agrees with the requirement for all lane rental schemes to be approved by the Secretary of State prior to implementation. However, NJUG strongly believes that if Government is serious about reducing disruption then it needs to change primary legislation to allow any lane rental scheme (and the various other street works legislation) to apply equally to highway authority works who undertake around 50% of all works on the street.

3.1.8 Application of revenues from lane rental schemes

Paragraphs 2.17 & 2.18 – If the streets subject to lane rental are carefully selected and targeted, and small in number, NJUG strongly believes that a successful outcome of any lane rental scheme should be no or minimal net revenues, because the objective of lane rental is to reduce disruption by incentivising utilities (and highway authorities) to avoid the charge by working outside traffic-sensitive times or using innovative techniques such as plating to return the road to service during traffic-sensitive times.

However, within that context, NJUG supports the net revenues from any lane rental scheme being ring-fenced for use in helping to reduce disruption. We support the majority of proposed activities listed including – research and development and infrastructure works to minimise the disruption caused by future works (e.g. pipe subways) and would also suggest that could fund an independent evaluation of the two initial schemes whose net revenues could potentially be combined to support this and other initiatives of wider benefit.

But, NJUG does not support the use of lane rental revenues to enhance the skills and capacity of the local authority staff charged with managing street works and assessing the proposed duration of works. These activities should be part of the local authorities' own budgets and responsibility, and their inclusion could act as a perverse incentive, changing a local authority's focus from working with utilities and their own highway authority colleagues to reduce disruption by avoiding the charges, into a revenue generation mechanism for the purpose of resource and training of authority staff.

Given that the net revenues from any lane rental scheme will be ultimately funded by utility consumers (and if applied to authority works, council tax payers), then NJUG asserts that it, along with utility colleagues, should actively contribute the decisions on what funds are used for.

3.1.9 Safety Issues

Paragraphs 2.19 & 2.20 – NJUG strongly agrees that:

- *“it will be important for authorities designing schemes to be satisfied that safety will not be compromised by the operation of any lane rental schemes”.*
- *“The existence of a lane rental scheme would be no excuse for cutting corners in relation to safety, or for compromising the quality of reinstatements”* and that
- The Safety Code will continue to apply to all works, whether in a lane rental scheme or not.

However, there will be circumstances when working at night may not be possible for safety or operational reasons. Clearly, as recognised in Paragraph 2.19 it is for those carrying out the works who are ultimately responsible for ensuring works are carried out safely, to make that decision.

There are also concerns that the safety, vulnerability and effectiveness of the workforce working in the dark may sometimes be at risk (lack of light, personal attacks to the work force from drunks and angry customers). Further supervision at night may therefore be required for certain jobs, which will further increase costs to utilities.

It is important that if a works promoter is required to, or elects to work through the day and, for safety reasons instead of undertaking works out-of-hours, then a local authority should not unduly pressurise them to work at night if it would be unsafe to do so. Instead, we would expect them to work closely with the works promoter to minimise the disruption through careful planning and design.

Recommendation: NJUG recommends this is reflected in the Guidance, and that in cases where utilities can demonstrate to work out-of-hours would be unsafe, lane rental charges would not apply, and the utility should work very closely with the local authority to seek to minimise any disruption.

Night working (to avoid Lane Rental charges) may also impact the way in which reinstatements are undertaken, **with the need to provide hot boxes to reinstate (due to lack of correct materials outside of normal supplier opening times), or alternatively an increase in interim reinstatements, especially during the winter, when temperatures determine compliance with the Specification for Reinstatement of Openings in the Highway (SROH).** Many utilities currently undertake in excess of 95% first time reinstatements. These two impacts will result in a further cost burden being imposed upon the utility industry, and potentially increased disturbance for residents at night and a continuing need to complete the permanent reinstatement during the working day.

3.1.10 Operational and systems issues

Paragraphs 2.21 & 2.22 – NJUG welcomes the recognition to consider the operational and systems implications of any proposed lane rental schemes, including in particular how their proposals will operate within in EToN and the National Street Gazetteer (NSG).

Whilst NJUG agrees that any proposed changes to the EToN technical specification or the NSG should be discussed with DfT as soon as possible, **we would suggest they should also be widely discussed with the sector, and in the normal way through HAUC(UK), and in conjunction with the EToN Developers Group and HAUC(UK) Co-ordination and EToN Strategy Groups.**

Clearly, information about lane rental charges should be made available via the NSG and incorporated within the EToN systems. **However, it is vital that the information is also in such a format so as to allow integration with works promoters work management systems. Currently the EToN systems and utilities' work management systems will need significant investment to enable them to operate within a lane rental environment for some targeted streets / parts of streets, whilst operating as currently on the remainder of the networks.**

Recommendation: NJUG therefore recommends that this is satisfactorily resolved within sensible timescales and through discussion with the EToN Developers Group and the HAUC(UK) Co-ordination and EToN Strategy Groups.

Again, **Paragraph 2.22** makes reference to “*undertakers*”, which NJUG believes should refer to “*works promoters*”.

3.1.11 Impacts on business

Paragraph 2.23 – NJUG does not agree that “no costs will arise as an immediate consequence of the making of the proposed Regulations”, as, given the stated intention of the London Mayor to introduce lane rental, and TfL’s concurrent consultation, utilities within the London areas are already working through and preparing for the likely implications for working practices, work management systems etc.

Paragraph 2.24 – NJUG does not believe that the Impact Assessment accurately reflects the full range of costs or benefits of any lane rental scheme. Whilst the baseline data appears relatively accurate, there is no recognition of the additional costs that utilities (and highway authorities) will incur in choosing to avoid the lane rental charge. **Working out-of-hours incurs a premium in labour costs and the purchase of plates has a cost, along with their laying and taking up, which impacts on the amount of hours available to actually undertake works.**

NJUG therefore believes that the role of assessment of any prospective schemes by the Secretary of State is vital in ensuring that any scheme accurately reflects the respective costs and benefits, and will truly deliver the proposed benefits.

3.1.12 Sunset Clauses

Paragraphs 2.25 & 2.26 – NJUG strongly welcomes the intention to apply a sunset clause for the lane rental regulations. However, given the significant additional costs that utilities and highway authorities will incur (whether through the lane rental charges or the additional costs of avoiding them) we believe that 7 years is too long a period if the lane rental regulations do not deliver very considerable benefits that outweigh them.

Recommendation: NJUG believes that a 3 year period is more appropriate, allowing sufficient time for lane rental to ‘bed in’, and its impacts to be analysed. We therefore recommend the timescale for the sunset clause is reduced to 3 years.

4.0 NJUG Commentary on the Draft Regulations

As well as the detailed comments above, NJUG would like to highlight the following specific additional points regarding The Street Works (Charges for Occupation of the Highway)(England) Regulations xxx. NJUG’s comments on the Consultation document and the Guidance should be deemed to also apply to the draft Regulations themselves, where appropriate.

Citation, commencement and Expiry

Paragraph 1 – As per our previous comments NJUG believes that the sunset clause should take effect 3 years after the Regulations come into force and not 7 years, due to the significant additional costs that will be incurred by works promoters.

Equally, although NJUG welcomes the inclusion of a sunset clause, this does not mean that further Regulations will not change this or that any new Government is bound by the promise to review the Regulations. This should be addressed if possible.

Interpretation

Paragraph 2 - The definition of an “Approved Authority”. As drafted the Secretary of State must make an Order to create an “approved authority”. This is the only reference and there is no mention of an approved scheme so if the Order isn’t clear or disappears as part of “Localism”, so does any protection works promoters get from the scheme.

Paragraph 2 - Working Day. The draft lane rental regulations refer to the duration of works, and then refer to a daily charge being applied. This makes it unclear whether lane rental charges apply to all days or all working days as used in other aspects of NRSWA 1991 and TMA 2004. We understand that it is intended that lane rental charges would apply to weekends as well as working days.

Recommendation: NJUG suggests that the Regulations make it clear that daily charges apply only to working days, and do not therefore apply to weekends, as to do so would disincentivise works promoters to actively plan works at weekends rather than during the week.

Application of Regulations

Paragraph 3 – NJUG believes that works in verges should be exempt from the application of these regulations as they pose no or little inconvenience to traffic.

Recommendation: Therefore NJUG recommends that verges are expressly excluded.

4.1 Prescribed Charges

Paragraph 4(1) - NJUG's previous comments regarding the need for lane rental to apply to all works promoters applies.

Paragraph 4(3) – NJUG's understanding is that the daily charge is capped at £2,500. As currently drafted the Regulations suggest that £2,500 is the daily charge applicable in all cases. We therefore suggest the wording is changed to:

“The daily rate of charge applicable is a maximum of £2,500”.

Additionally, although the Regulations sets a maximum and lists circumstances when an authority may waive or reduce charges, NJUG's experience with S74 overstay charges is that this rarely happens. However, we still support the inclusion of the principle that it is a maximum not an actual figure.

Duration of Works

Paragraph 5 - NJUG would make the following points

- (a) NJUG is concerned that there is a risk that when an Authority restricts work so that works promoters can only work at specific times or can only start part way through a day, the full days lane rental charge would still be payable.
- (b) With some minor changes, the basic rule about charges continuing if the works are completed, but a single item is left on site are the same as the S.74 Overstay Regulations. However, NJUG is concerned that there may be a possible problem if works take place in one street but barriers are found in another non-traffic-sensitive street. Would S.74 charges rather than Lane Rental charges apply? We would welcome clarity on this point
- (c) As drafted there is a risk that if works are planned to be in a footway, but halfway through need to extend into the carriageway, the promoter will get lane rental charges for the whole of the works although part of the works were covered by an exemption. There are two reasons for this (a) the regulations state that street works end on the date of the works clear or closed notice regardless of any works carried out in non traffic-sensitive sections in the footway and carriageway. (b) Charging is by reference to the dates on the start of works and close/clear notice and does not

say to exclude any days when the works were wholly in a part of the street covered by an exemption.

Recommendation: NJUG recommends that any works which subsequently encroach on the carriageway after initial works in a footway, should only be considered for lane rental charges a) from the date of occupation of the carriageway and b) if they do so during lane rental periods / times.

Exemptions

Paragraph 6 - NJUG supports the exemptions listed within the Regulations, which clearly limit when and where lane rental charges will apply, **but believe that in addition, emergency works should also be exempt from lane rental charges (as per our previous comments).**

In addition, it is vital that all roads classified as traffic-sensitive are indeed justifiable and that the information within the NSG is up-to-date and accurate.

Recommendation: NJUG therefore believes and recommends that the conditions of Secretary of State approval must include transparency and up-to-date classifications within the NSG.

Additionally it is vital that the issue of whether cores would be subject to lane rental charges. NJUG suggests that, preferably, cores should not be undertaken during periods when lane rental applies i.e. during the busiest times, or alternatively at the very least they should be exempt from lane rental charges, because otherwise, utilities could be subject to multiple lane rental charges for cores being undertaken by local authorities or an incentivised contracted party on their behalf.

Recommendation: NJUG recommends that in order to minimise disruption [either the Regulations or the Guidance] precludes cores being undertaken during lane rental periods.] But, if this is not possible, then NJUG recommends that the taking of cores is exempt from lane rental charges.

4.4 Application of charges and keeping accounts.

Paragraph 8 - NJUG welcomes the requirement for transparency regarding the application of charges and keeping of accounts. However, unlike the Traffic Management Act 2004 provisions, there does not appear to be any requirement for local authorities to administer the scheme in an efficient way and at a reasonable cost, nor does there appear to be any requirement for them to publish the costs of running their lane rental scheme. In the interests of transparency and in order to ensure that the objective of reducing disruption, and not revenue generation, is the focus of all schemes,

Recommendations: NJUG recommends that Paragraph 8 of the Regulations must be amended to include all Works Promoters, rather than just Undertakers. NJUG also recommends that the Government include provisions with the Regulations for demonstration of efficiency in the administration and management of the scheme and a requirement to publish the likely costs of running the scheme (similar to wording agreed regarding permit schemes during the passage of the TMA 2004 through Parliament).

5.0 NJUG Commentary on the Lane Rental Schemes: Draft Guidance to English Local Highway Authorities

Introduction

5.1 Purpose of the document

Paragraph 1.1 - Again, NJUG's comments apply regarding the need for the lane rental provisions to apply to all works promoters (and not just "*charging street works undertakers*") if they are to deliver any positive additional benefit.

Paragraph 1.3 – NJUG welcomes the clear wording in this paragraph, which confirms that the new lane rental provisions focus on "*the key strategic locations on a network and with charges applying only at the busiest times.*"

However, as before NJUG believes in order to achieve this requirement in practice, clearly defined criteria should be developed, based on a high traffic densities, with an agreed high volume of traffic per hour threshold, below which lane rental provisions would not apply. This criteria must be included within the Regulations.

Paragraph 1.4 – NJUG welcomes confirmation that the Government only intends to approve one or two schemes until the lane rental concept has been proven effective.

Paragraph 1.5 – NJUG welcomes the recognition that street and road works are '*necessary in order to provide and maintain essential services and transport networks on which we all depend.*'

5.2 Context

Paragraph 1.6 – NJUG welcomes the clarification of highway authorities' duties under both NRSWA 1991 and the TMA 2004, including in particular the duty to co-ordinate and the Network Management Duty.

However, NJUG believes there should be a requirement for local authorities to demonstrate that they are performing these duties effectively. **Only if they are able to demonstrate this, and that they have exhausted the use of all other regulatory and voluntary initiatives, should they be able to apply to operate a lane rental scheme.**

Paragraph 1.8 – Recognises that NRSWA 1991 provides financial incentives to reduce the disruption from street works, including S74 overstay charges.

However, it goes on to say that '*S74 does not provide an incentive to reduce durations or disruption to road users*'. **NJUG disagrees with this statement, as since its introduction in 2002, S74 has delivered a step-change in the reduction of durations. All durations must be agreed with the local authority, either under the Noticing provisions or when a utility applies for a permit. This coupled with S74 overstay charges has successfully driven down durations very substantially. Utilities are increasingly being challenged towards delivering ever-shorter durations under the existing regime, and so NJUG does not agree that the existing regulatory regime does not provide sufficient powers to reduce durations of individual works, and through co-ordination of two or more sets of works.**

Equally, as before, NJUG remains convinced that in order to reduce to disruption further, application of similar financial incentives to highway authority works, to enable all works to be brought to a similar standard and efficiency level, is essential before introducing yet more provisions just for utility works.

Paragraph 1.9 – confirms that primary legislation would be needed to apply lane rental provisions to highway authority works, yet acknowledges that such works also cause substantial disruption. The Government therefore '*strongly encourages highway*

authorities to apply lane rental charges to their own works on the same terms as to utilities and other street works undertakers.'

Whilst NJUG applauds the principle, it is very unlikely that the majority of authorities (particularly in the current economic climate) would do so, without a statutory requirement.

Equally, whilst we recognise and support TfL's proposal to apply lane rental charges to its own works, without a statutory requirement to do so, a change of Mayor, or a cut in TfL's budget, or a change of high-level personnel could simply withdraw that commitment, and there is no compulsion for other local authorities to apply lane rental charges to their own works.

5.3 The role for lane rental

Paragraph 1.11 – Again, NJUG welcomes the specific wording defining lane rental schemes as only applying to the most critical parts of the highway network, with charges only applying at the busiest times.

As before, NJUG continues to call on Government to apply these provisions to all works promoters.

This paragraph asserts that lane rental schemes could provide real financial incentives that encourage undertakers to:

- **Reduce the length of time sites are unoccupied** – NJUG has been focusing on this for some time now, and each day of occupation of the highway already costs utilities money. This coupled with ever-shorter durations being pushed by authorities, and incorporated within the London, NJUG & HAUC(UK) Codes of Conduct, and the reputational damage of non-occupied sites, mean that this issue is already being addressed.
- **Improve planning, co-ordination and working methods to maximise efficiency** – Through the NJUG Vision for Street Works, the various Codes of Conduct, various advance planning initiatives, the existing Duty to Co-ordinate or permit schemes, there is already sufficient regulation and voluntary initiatives to deliver effective co-ordination of works.

NJUG strongly believes that greater effort should be applied to ensure consistent and effective delivery of the Duty to Co-ordinate and the Network Management Duty, which would negate the need for any further legislation / regulation, including lane rental.

- **Carry out more works outside peak periods and re-open the highway to traffic at busiest times** – Both of these objectives are already included in the London, NJUG and HAUC(UK) Codes of Conduct, with significant increases reported in the first two years of the London Code. Additionally, local authorities already have existing powers to direct the timing of works, which should be used more effectively at critical points on the road network if necessary, and in preference to the introduction of lane rental.
- **First time permanent reinstatement** – Again, the NJUG Vision for Street Works, and the London, NJUG and HAUC(UK) Codes of Conduct have long encouraged first time permanent reinstatement, with many utilities recording in excess of 90% first time permanent reinstatement.

Paragraph 1.12 – Members of NJUG have already invested heavily in all of the above practices, where safe, practical and appropriate. Any additional investment or expenditure will need to be agreed with the industries’ economic regulators.

Recommendation: NJUG therefore urges Government to hold meetings with Ofgem; Ofcom; and Ofwat to discuss how such incentivisation might take place against a background of increasing utility bills and the need to protect the consumer (which is the economic regulators’ primary duty).

Scope of lane rental schemes

5.4 Overview

Paragraph 2.1 – NJUG welcomes the statement that before deciding whether to develop a lane rental scheme highway authorities need to be clear about its objectives, and carefully assess whether those objectives could be met, either wholly or in part, through more effective use of existing powers and tools.

Additionally, NJUG welcomes the statement that *“In particular, an authority will need to show that it has exhausted all opportunities to achieve the desired outcomes by means of a permit scheme”*, with recognition of the significant additional costs and the decision to apply for a scheme not being taken lightly.

Recommendation: NJUG also suggests that it would be helpful to include a requirement to demonstrate that they are fulfilling their Network Management Duty as effectively as possible.

Paragraph 2.2 – NJUG welcomes that this paragraph highlights the shortcomings of the original Camden and Middlesbrough pilots, including in particular the application of charges across all streets which did not incentivise prioritisation of works on the busiest streets.

Paragraph 2.3 – NJUG welcomes the recognition of the need to avoid excessive costs being passed on to utility customers. However, the suggestion that this could be achieved by focusing on those critical parts of the highway network where the costs of disruption caused by works are greatest, does not take into account the additional costs of avoiding the charges by out-of-hours working or innovative techniques to return roads to service during the busiest times.

Paragraph 2.4 – NJUG welcomes the confirmation that charges must only be applied when works occupy the highway at peak periods, with exemption from charges at other times. However, as before, Government need to guard against the risk of conflicting objectives, potentially limiting active working to as little as 3 hours a day (as detailed previously).

5.5 Highway Works

Paragraph 2.5 - As before, NJUG fundamentally believes that if lane rental is to deliver any additional benefit over existing regulatory and voluntary measures it must apply to all works promoters, including highway authority works. If this requires a change to primary legislation then Government should find a suitable window within the Parliamentary timetable to deliver it.

Key features of lane rental schemes

5.6 Introduction

Paragraph 3.1 - NJUG welcomes the boundaries listed, within which all schemes will have to operate, including maximum charge levels, type of works and streets to which lane rental charges can be applied, and the purposes for which the highway authority may use the proceeds of lane rental schemes.

Paragraph 3.2 – NJUG believes that the Guidance should be statutory and not just couched in the terms of scheme promoters being expected to follow it.

5.7 Streets where charges may be applied

Paragraphs 3.3 to 3.6 – NJUG believes that the Regulations must expressly define criteria based on high traffic densities, with an agreed high volume of traffic threshold, to determine the pinchpoints or parts of streets to which lane rental may apply.

The current statement allows for an authority, whatever its size, area composition and levels of congestion, to nominate streets where the levels of congestion, may be greatest to them, but that in themselves, are not sufficient to warrant the additional cost to utility customers e.g. the busiest streets in a rural village are considerably less trafficked than the centres of large urban conurbations.

Paragraph 3.4 – As before, NJUG welcomes:

- Confirmation that traffic-sensitivity of a street in itself is not sufficient to justify its inclusion within a proposed lane rental scheme.
- A requirement for an authority to demonstrate that they have adopted an evidence-based approach – although we would welcome a strengthening of the specific wording from “*The Secretary of State will wish to see...*” to “*The Secretary of State will require to see...*”.

Paragraph 3.5 – NJUG welcomes the confirmation that “*In general, the disruption caused by footway works is unlikely to be sufficient to justify lane rental charges...*”.

Recommendation: NJUG believes and recommends that footway works should not be subject to lane rental charges, however, if the Regulations are to be left open to enable charging for works that do not affect the carriageway, then there should be defined criteria as to when this would apply.

Paragraph 3.6 - NJUG welcomes the exclusion from lane rental charges, of works in footpaths and bridleways where a pedestrian planning order is in place, and in highways whose use by vehicular traffic is prohibited by a traffic order at all times.

5.8 Types of works

Paragraph 3.7 – As before, NJUG believes both street and road works should be liable to lane rental charges on those targeted streets

NJUG welcomes the exemptions listed in the Guidance, **and strongly advocates the additional inclusion of emergency works – our comments on the Draft Regulations also apply.**

5.9 Charges

Paragraph 3.9 - NJUG welcomes the wording in the Guidance which expressly confirms that the figure of £2,500 is a maximum daily lane rental charge that may be applied, **and this wording should be replicated within the Regulations themselves.**

The wording around the need for full justification of charges and the need for proportionality are also strongly welcomed.

Paragraph 3.11 – As before, NJUG believes that applying lane rental charges at weekends is a further disincentive to work at weekends, given the already additional labour costs. Whilst we recognise there may be a few circumstances where working at weekends may be more disruptive, this will not generally be the case.

Recommendation: NJUG therefore recommends that the Guidance should more actively encourage a general exclusion of weekend or bank holiday working from lane rental charges, by specific inclusion of wording such as:

“Authorities should look to actively encourage weekend or Bank Holiday working by generally excluding them from lane rental charges. However, there may be specific circumstances where working at weekends may be more disruptive, and authorities will need to demonstrate that this is the case, and therefore lane rental may apply at certain times.”

NJUG welcomes the confirmation that *“authorities will also need to work with the relevant environmental health departments to ensure that working out of hours will be a realistic option for those carrying out works.”*

However, as per our previous comments, NJUG is concerned that works after 11pm may not be allowed for environmental reasons, and, if (as per the TfL lane rental proposal) works before 8pm might attract the lane rental charge, utilities would be potentially faced with just a 3 hour working window when lane rental charges would not apply.

Recommendation: NJUG therefore suggests that in cases where an Environmental Health Officer prevents works taking place at night, there should be an exemption from lane rental charges.

Finally, in determining the detailed arrangements of when and where lane rental will apply it is vital that highway authorities give sufficient time to enable utilities to plan works to be carried out in the most economical way.

Paragraph 3.12 – NJUG welcomes the suggestion that *“authorities should also consider carefully how their scheme would treat joint working arrangements involving different works promoters – for example by providing for a single charge to be apportioned between the different works promoters, or even by offering additional discounts to encourage joint working.”* This will actively further encourage joint occupation or sequential working, which have a significant positive impact on reducing disruption.

Paragraph 3.13 – NJUG’s previous comments on double jeopardy apply.

Recommendations: NJUG strongly recommends that DfT reconsider the ability for lane rental and S74 to both apply in the event of overrun of works on a ‘lane rental’ street. The combination of both charges will result in disproportionate additional costs to utilities, particularly if Government progress their proposals to substantially increase S74 charges. NJUG urges DfT to include within the Regulations, confirmation that where lane rental applies, neither S74 overstay charges nor permit fees will apply.

Paragraph 3.14 – NJUG supports the principle of the proposal for a one-off charge in the event of a single item of signing, lighting or guarding being left behind on a site.

5.10 Application of Revenues

Paragraph 3.15 – Our comments in Section 3.1.8 of our Detailed Commentary on the Consultation Document apply. In general:

- NJUG supports the principle of net revenues being ring-fenced and used to develop new ways or reducing disruption, including the majority of suggested areas,
- However, NJUG does not support the use of such revenues to improve the skills and capacity of local authority staff charged with managing street works and assessing the proposed duration of works.
- Given that utilities, and ultimately their customers, are likely to make a significant contribution to any revenues arising from lane rental, NJUG believes that on behalf of their customers, utilities should be actively involved in the decisions around the allocation of revenues.

Paragraph 3.16 – NJUG's previous comments apply regarding the need for the application of lane rental charges to apply equally to highway authority works.

5.11 Systems Issues

Paragraphs 3.17 to 3.19 - Our comments in Section 3.1.10 on the Consultation Document Apply.

NJUG welcomes the statements within these paragraphs but would stress that it is vital that wider utility systems issues are also considered, **including ensuring that the information is also in such a format so as to allow integration with works promoters' work management systems**

To achieve a solution acceptable to the whole road and street works sector,

Recommendation: NJUG recommends that systems issues are discussed in the normal way through HAUC(UK), and in conjunction with the EToN Developers Group and HAUC(UK) Co-ordination and EToN Strategy Groups.

5.12 Dispute Resolution

Paragraph 3.20 – NJUG welcomes the recognition of the need for some form of appeals mechanism, and the reference to the HAUC(UK) Dispute Resolution Process.

We note that Government suggests that *“authorities should consider whether it would be helpful, for example to designate an Appeals Officer at arm's length from the day-to-day running of the lane rental scheme”*.

Recommendation: Whilst, NJUG recognises this suggestion in the context of the localism agenda, in order to achieve absolute creditability and therefore the avoidance of utilities resorting to the courts for rulings, we strongly suggest that any appeals should be resolved via the HAUC(UK) Dispute Resolution procedure.

5.13 Transitional Issues

Shadow running

Paragraph 3.21 – NJUG welcomes the suggestion that authorities might like to consider a period of shadow running prior to the formal introduction of a lane rental scheme, which we believe is essential to iron out any interpretation, operational or other issues in the spirit of co-operation and prior to any charges being levied. This will allow local authorities and utilities to work constructively together to seek to reduce disruption once the scheme is in operation, rather than waste significant amounts of time resolving large numbers of disputes.

Works already notified when lane rental comes into operation

Paragraph 3.22 – NJUG welcomes the requirement to include suitable transitional arrangements so that works promoters do not unfairly face charges in respect of works which had already been planned and scheduled before a lane rental scheme had come into existence, and which cannot reasonably be re-scheduled to avoid chargeable periods.

We note the paragraph also goes on to say “*However, these transitional arrangements will also need to be carefully designed to avoid creating perverse incentives (for example by encouraging a large number of early permit applications aimed at avoiding charges).*”

NJUG would like to reiterate that any lane rental scheme should be about reducing disruption, and therefore the emphasis should neither be about revenue generation or avoidance of the scheme overall, more about encouraging the reduction of disruption through avoidance of the charges. We therefore suggest that this wording could more helpfully be amended to emphasise that:

“Authorities and utilities will need to work together to deliver a managed transition which does not create peaks and troughs in the numbers of works, with a flexible approach during the transitional period and the early days of any scheme.”

Scheme development, approval, variation and evaluation

5.14 Consultation

Paragraphs 4.1 to 4.3 – NJUG welcomes the requirement for a consultation to take place prior to any lane rental scheme being submitted, and **believes this should be enshrined within the Regulations.**

As before, NJUG believes the reference in the first bullet point of Paragraph 4.1 should be changed from “*street works*” to either “*road and street works*” or “*works in the street*”, to reflect our strong view that lane rental charges should apply to all works promoters, including highway authorities.

NJUG particularly supports the emphasis on informal dialogue with works promoters, which we would welcome at the earliest possible stage, and which has happened in the development of the draft TfL scheme.

5.15 Applications to operate a lane rental scheme

Paragraph 4.4 – NJUG agrees with the suggested information that any lane rental scheme application should include. However, NJUG would suggest that a minimum of six months from approval of a lane rental scheme should elapse before a scheme is brought into operation. Whilst it is hoped that any scheme promoter will actively involve works promoters, their contractors and systems developers at as early stage as possible, works promoters will be unwilling to spend significant amounts of money in advance of approval of any scheme, which may ultimately be a) rejected outright b) amended significantly. **Therefore it is vital that a reasonable lead time is allowed to enable all works promoters to put in place appropriate changes to enable effective and efficient**

compliance with the scheme (e.g. systems changes, new labour or contract terms and conditions etc.)

Recommendation: NJUG therefore recommends that the Guidance is amended to allow for a minimum of six months from approval of a lane rental scheme, before it is brought into operation, and that this is included within the Regulations.

Paragraph 4.5 – NJUG welcomes the express requirement for local authorities to demonstrate:

- How the aims and objectives of any proposed lane rental scheme will integrate with the delivery of an authority's Network Management Duty and any other relevant objectives and policies.
- What specifically *"would be achieved by lane rental that could not reasonably be achieved through other tools at the authority's disposal. In particular, the authority will need to show that it has exhausted all opportunities to achieve the desired outcomes in a less costly manner through a permit scheme."*

Recommendation: Although NJUG would suggest this last bullet point is expanded to include not just demonstration that the authority has exhausted all opportunities to achieve the desired outcomes in a less costly manner through permit schemes, but also *"through all other existing legislation / regulation and voluntary initiatives available to them."*

Additionally, NJUG believes there should be a requirement for a local authority to demonstrate what benefits have been achieved so far, by what method / mechanisms, and to demonstrate what additional benefits lane rental will deliver.

- In the fourth bullet point there is reference to the need for local authorities to show how any proposed scheme will provide real scope for *"undertakers"* to reduce their exposure to charges through improved working practices. Again, NJUG believes this should refer to *"works promoters."*
- A robust plan to evaluate whether the objectives of a lane rental scheme have been met, including an evaluation methodology, a fully worked up evaluation programme, setting out when the evaluation will be carried out, the baseline data against which scheme performance will be measured, and a formal statement that this evaluation will be resourced.

Recommendation: NJUG would also recommend that the evaluation methodology should also expressly include a requirement to assess the impact / positive benefit against the total costs of the scheme, including the costs of utilities and indeed highway authorities. This is particularly important, given that the recent permit reviews undertaken by London and Kent County Council do not make any reference to the additional utility costs arising from the implementation of the respective permit schemes, which prevents a true assessment of their merit against the additional costs to utilities and their customers.

5.16 Cost benefit analysis

Paragraphs 4.7 & 4.8 – NJUG particularly welcomes these two paragraphs, and especially the confirmation that *"benefits attributable to lane rental should not include those benefits that could reasonably be expected to arise in the absence of lane rental under other mechanisms already in place within the area of the proposed scheme."*

5.17 The Secretary of State's assessment

Paragraphs 4.9 & 4.10 – NJUG welcomes the confirmation of the factors that the Secretary of State will consider when determining whether to approve a proposed lane rental scheme, including the reference to *“whether the authority has demonstrated that the proposed scheme can reasonably be expected to deliver benefits that justify the likely costs (including the likely impact on utility bills.)”*

However, NJUG would like to reiterate that any assumptions on the percentage of works that utilities will undertake whilst choosing to avoid the lane rental charge as opposed to paying it, need to be included in local authorities’ application in terms of likely total costs versus benefits e.g. the uplift in labour costs; the costs of purchasing and applying plating (if they are not already doing so); the additional costs of reinstatement during off-peak hours, given that suppliers of reinstatement materials do not open out-of-hours etc.

NJUG welcomes the Government’s commitment to only approving one scheme in a large urban area and one in a non-metropolitan area as a maximum during the pioneer stage. Given the substantial costs that works promoters will incur, either in paying or avoiding lane rental charges on targeted streets, it is essential that a rigorous and full assessment of the level of additional benefits versus the full costs is undertaken, before any decision is made to allow further schemes to be considered / approved.

5.18 The scheme order

Paragraphs 4.11 to 4.15 – NJUG welcomes the clarity around the approval of lane rental schemes and the method by which this will take place, including the issuing of an Order.

Specifically within **Paragraph 4.13**, NJUG notes that *“The Secretary of State’s Order will also need to specify the date on which the lane rental charges can begin, and in proposing a start date the authority will need to show that it is allowing a reasonable period for undertakers to prepare for the scheme.”*

NJUG comments regarding *“all works promoters”* instead of *“undertakers”* applies.

Additionally, given the problems which emerged during the introduction of the 2007 revised Noticing provisions, when insufficient time was allowed to make all the systems changes, NJUG strongly urges Government to allow a minimum of 6 months from the approval of the scheme to when the lane rental scheme comes into force, but depending on the complexity of the individual schemes and the amount of changes to EtoN and utilities work management / other systems it may be possible to run a proposed shadow scheme after 12 weeks.

Paragraph 4.14 & 4.15 – NJUG welcomes the requirement to consult on any changes to, or proposed revocation of, a lane rental scheme once it is in operation.

5.19 Minor variations to schemes

Paragraphs 4.16 & 4.17 – NJUG welcomes these paragraphs, which limit the circumstances under which minor variations to a lane rental scheme might be brought forward, and requires any flexibility that an authority requires to be set out clearly in their application to the Secretary of State.

Recommendation; The only additional point NJUG would like to see, is a requirement for local authorities to engage with works promoters as early as possible on any minor variation. This is particularly important given the lead time of many major utility and highway authority projects.

5.20 Evaluation and review

Paragraphs 4.18 to 4.20 – NJUG notes the requirement for local authorities to include in their application to operate a lane rental scheme, details of how the scheme will be reviewed and evaluated. **NJUG strongly believes that it is essential that any review is undertaken by an independent body, ideally the DfT, or an independent party on their behalf funded by the scheme profits.**

However, in the context of our comment above, NJUG does welcome:

- the requirement for the detailed evaluation plan to include *“when evaluations will be carried out, the “pre-lane rental” baseline data that will be used for the purpose of comparison, the data that will be collected to measure scheme performance, and the criteria against which success will be judged.”*
- The expectation (although we would prefer that it is a requirement) for an initial evaluation based on data from the first full year of scheme operation.

Recommendation: In respect of the suggestion for a further review in 2016, NJUG would suggest that a full Government review as part of the sunset clause provisions, should be taken 3 years after implementation, and so the lane rental scheme(s) approved during the pioneer stage should be evaluated 3 years after it / they came into operation.

5.21 Sunset clause

NJUG’s comments on 3.1.12 of our Detailed Commentary on the Consultation Document applies. NJUG welcomes the inclusion of a sunset clause, and that it should apply after 3 years, not 7 years, due to the considerable costs that will be incurred by works promoters.

6.0 NJUG Commentary on the Impact Assessment

Overview

NJUG’s wishes to raise a number of concerns around the robustness and validity of the Impact Assessment (IA) document that accompanies the DfT Lane Rental Consultation:

- NJUG is concerned that the IA does not sufficiently demonstrate the need for lane rental, nor does it show how lane rental will deliver benefits over and above the myriad of existing legislation / regulation that already applies to utility street works, and which have not been assessed.
- NJUG firmly believes that if lane rental is to deliver any additional benefit, it must apply to all works promoters, including local authority works which account for around 50% of all works in the street.
- NJUG is concerned that there is no serious attempt to set out a non-regulatory option (nor take into account and recognise the value of the range of existing voluntary measures already in place and delivering tangible benefits).
- There is also no justification of why regulation is preferred. The only alternative to lane rental that is seriously considered is intrusive regulation of streetworks through significant amendments to permits, which is a clearly unacceptable alternative to lane rental. Whereas, fine-tuning of the permit regulations, or refinement of schemes and agreement of several model schemes by local authorities in conjunction with utilities,

through the auspices of HAUC(UK), which could potentially deliver additional benefits, is not considered at all.

Costs and Benefits

- There has been no independent assessment of the total costs and benefits for lane rental, which appear to be taken directly and without question, from TfL's draft proposal, which, given that they are promoting lane rental, shows lane rental as being cost beneficial.
- Clearly, TfL's proposals are designed to address the very particular circumstances faced within London, and therefore other local authorities' costs and benefits would be significantly different. **Therefore NJUG asserts that the benefits attributed to lane rental by this IA, would not be the same for anywhere else in the UK.**
- The "*high*" estimates for costs and benefits are based on TfL's scheme and **four** other schemes being implemented despite the consultation specifically referring to only allowing one or two schemes initially, one in a large urban area, ie London, and one non-metropolitan area.

Additionally, the high estimate is "*calculated*" by doubling TfL's costs, and the low estimate is 0, for no schemes being brought forward. The "*best estimate*" is then just the average of the high and low estimates – ie. = TfL's costs / benefits – but it "*doesn't in any way prejudice*" future decisions by the SoS. These assumptions are therefore not based on the actual likely costs that will be incurred or the actual justified benefits that will arise.

- NJUG is also concerned that the IA does not accurately reflect all the costs that would be incurred if lane rental were implemented, including in particular the costs to utilities of avoiding the lane rental charge through out-of-hours working or use of innovative techniques to return the road to service during busy periods. These costs will be significant, even if lane rental is implemented in just one or two authority areas – and these costs should therefore be assessed, with input from NJUG, and included in the final IA.
- Equally, there is no attempt to take into account undertakers' administrative costs, or social costs to the community, such as increased noise and disruption in the evenings / weekends – although it appears that environmental benefits are taken into account – but as no detail is provided of TfL's analysis, it is not clear how this has been assessed.
- Finally, it is unclear why "*revenue accruing to the local authority*" should be regarded as a benefit to society, if there is an increase in costs to utilities (and ultimately to consumers' bills), and potential additional disturbance to residents and local businesses from night-time working or increased duration of works through use of plating / restricted hours

6.1 Summary and Interventions

What is the problem under consideration? Why is government intervention necessary?

NJUG would welcome sight of the calculations that lead DfT to suggest that "*on some estimates street works contribute to congestion that costs some £4.3 billion a year...*"

This paragraph then goes on to say “*works promoters are currently incentivised to focus on their own costs (to maximise profit) but not these wider costs to society*”, and therefore “*Government intervention is needed to bring works promoter’ incentives more closely in line with those of society at large, primarily in respect of those critical parts of local road networks where works impose the greatest negative externalities.*”

Utilities are not just incentivised to maximise profit but have a range of incentives, including safety, security and reliability, and high standards of service. Through their economic regulatory incentives, they are continually driven to operate more efficiently, and this includes undertaking works as quickly as possible in a safe manner. Undertaking street works costs utilities money, and it is not in their interests, either financially or reputationally, to occupy streets for longer than necessary.

The range of existing regulation and voluntary initiatives have also delivered real benefits in terms of reduced disruption, including:

- **Section 74 Overstay Charges** – since its introduction in 2002 S74 has delivered a step change in durations of utility street works, with TfL now reporting 98% compliance with agreed works durations, and Kent County Council reporting 96% compliance.
- **Fixed Penalty Notices and the Improved Noticing provisions** – have significantly improved the quality and timeliness of notices, with the majority of utilities reporting 97%+ compliance on timeliness of notices.
- **London Code of Conduct** – delivered 2311 days of saved disruption in its first two years, increased out-of-hours working, use of plating and first time reinstatements.
- **Permits** – Whilst neither the London or Kent County Council first year permit reviews, covered the additional costs incurred by utilities, they both report a range of benefits attributable to the schemes.

NJUG believes that without a comprehensive review to quantify the costs and benefits of all existing regulations / voluntary initiatives, the estimate of the likely costs and benefits within the IA will be inaccurate and does not demonstrate the additional benefits over and above the existing legislation.

NJUG believes that if Government is serious about reducing disruption then it needs to require any lane rental scheme to apply equally to highway authority works, which account for around 50% of works in the street.

Given that Government’s objective is to incentivise ‘works promoters’ to ‘work in a less disruptive way, NJUG asks whether DfT have had extensive dialogue with the utility sector economic regulators, and if not, urges them to do so before considering implementing lane rental.

What are the policy objectives and the intended effects?

Whilst NJUG supports, and is actively working towards, Government’s objectives of reducing disruption from all works in the street, NJUG remains unconvinced that lane rental will deliver additional benefits (as above.) Equally, whilst the Government asserts that lane rental “*could provide a clear financial incentive for works promoters to manage their works in a less disruptive way, so reducing costs currently incurred by road users (including businesses)*”, the IA does not satisfactorily demonstrate that the lane rental proposals will actually deliver this objective.

NJUG's comments apply, regarding the need to apply lane rental equally to all works promoters working on targeted streets at targeted times.

Within the context of our comments above, regarding the effectiveness of lane rental, we welcome Government's approach to pilot a small number of schemes (one or two maximum) to inform future assessments of whether lane rental could usefully play a wider role. However, before consideration is given to lane rental being used elsewhere NJUG strongly suggests that a robust independent assessment is undertaken of the full costs and benefits of the pilot lane rental schemes, which separates out these from all the benefits of existing regulatory and voluntary measures.

What policy options have been considered, including alternatives to regulation? Please justify preferred option (further details in the evidence base)

As per the comments in the Overview above, NJUG does not believe Government have adequately considered either a) the effective and consistent use of the range of existing regulatory measures, which, when implemented effectively, have delivered real benefits, and b) the range of voluntary initiatives, including the London, NJUG and HAUC(UK) Codes of Conduct, which are proven to be delivering real reductions in disruption, and which are not included in the IA assessment.

NJUG is concerned that Government simply confirms its preferred option as Option 1 - to legislate to allow pilots of lane rental targeted at critical parts of local road networks. There is no justification as to why this is the preferred option, as opposed to Option 3, and we therefore fail to see how DfT have complied with Government's commitment to not impose further burdens on business, without having first rigorously considered non-regulatory solutions or enhancement of existing regulatory provisions.

6.2 Summary: Analysis and Evidence – Policy Option 1

Other key non-monetised costs by 'main affected groups'

As highlighted by the GLA Transport Committee, with which NJUG concurs, there is a significant likelihood that working outside-of-hours will simply transfer disruption from motorists passing through an area where works are taking place, to businesses and residents of an area who could be face with noise, light, additional traffic and potentially increased durations of works.

Description and scale of key monetised benefits by 'main affected groups'

Our comments above apply. Whilst there may be less disruption to traffic, although this itself is not satisfactorily demonstrated in this IA, there is very likely to be additional disruption and disturbance to local residents / businesses, resulting from increased night-time working. Additionally, there is no recognition of the social cost to, and financial cost of utility / contractor personnel of out-of-hours working.

Direct impact on business (Equivalent Annual) £m:

NJUG asserts that the term "*business*" also includes utilities and their commercial customers, and therefore, any direct impact on business should include all the costs which utilities and their customers will incur as a result of implementation of lane rental.

This must include not only the potential costs of incurring lane rental charges, but the additional cost of avoiding them, and extra administrative costs, as highlighted throughout this consultation response.

Enforcement, Implementation and Wider Impacts

From what date will the policy be implemented?

As per our previous comments, in order to be able to implement lane rental, utilities and local authorities will require changes to the EToN system and utility work management systems; working practices to facilitate extensive out-of-hours working, including in particular, the use of hot-boxes to facilitate reinstatement of works out of hours; contractual agreements between utilities and their contractors; contractual arrangements between utilities and materials suppliers.

It is therefore vital that sufficient time is made available between the laying of the lane rental regulations and implementation. NJUG strongly suggests that an absolute minimum of 6 months is necessary, to avoid the considerable problems which arose following the implementation of the Revised Noticing Regulations in 2008, and NJUG's preference would be a 9 month window before implementation.

Does the proposal have an impact on competition?

This IA suggests that there would be **no** impact on competition of introducing lane rental. However, NJUG disagrees, and must point out that the costs of providing a utility connection or upgrade within an area that is operating a lane rental scheme, will be significantly more expensive than providing a connection in an area that doesn't operate a scheme. **As previously highlighted a cost of a 3 day standard gas connection of between £600 to £800 would increase to in excess of £8,000.**

Additionally, NJUG expects that economic regulators would be likely to make allowances for those utilities operating within lane rental areas to pass through to the consumer, the costs of efficiently incurred lane rental costs. Whereas those who do not have lane rental schemes within their area of operation would not have such an allowance.

Social Impacts

The IA incorrectly suggests that there is no impact on health and well-being of the lane rental proposals. As above, there is no recognition of the social cost of either increased disturbance to local residents / businesses of increased night-time working, or the social cost to utility / contractor operatives of working at night.

This point has also been highlighted by the GLA Transport Committee, and it is also worth reiterating that if lane rental delivers additional benefits in terms of reduced disruption, then this will benefit motorists who are usually passing through these thoroughfares, but the lane rental charges will be paid for by the residents and businesses who live in the communities where it applies, and who will potentially face additional disturbance / longer duration works through night-working or using of plating.

6.3 Summary: Analysis and Evidence – Policy Option 2

Other key non-monetised costs by 'main affected groups'

This option suggests that enhancing permit schemes would be '*materially greater*' than introducing lane rental schemes. **Given that a) any authority applying to operate a lane rental scheme will already had to have operated a permit scheme, and will continue to do so, regardless of any lane rental provisions, b) existing permit scheme**

authorities are already looking to enhance their schemes in dialogue with utilities and c) the additional costs of utilities in complying with permit scheme requirements, including in particular the additional administrative costs and impact on operational efficiency are yet to be quantified - NJUG fails to see how this option will be materially greater, as the costs of the permit scheme will still continue alongside any lane rental charges or their avoidance.

Does the proposal have an impact on competition?

This IA suggests that there would be **no** impact on competition of introducing enhanced permit scheme provisions. **However, NJUG disagrees, and must point out that economic regulators are already considering making allowances for those utilities operating within permit scheme areas, to pass through to the consumer, the costs of efficiently incurred costs. Whereas those who do not have permit schemes within their area of operation would not have such an allowance e.g. Ofgem's recent consultation on the proposed re-opener for the Gas Distribution Network Operators in respect of Traffic Management Act 2004 provisions.**

6.4 Summary: Analysis and Evidence – Policy Option 3

NJUG firmly believes that the various voluntary measures introduced by NJUG, HAUC(UK) and the London Mayor have been proven to deliver real benefits and should be properly assessed by Government before introducing yet another layer of regulation on utilities and their customers.

This IA suggest there is *“no reliable basis on which to estimate the extent to which street works undertakers will choose to adopt different working practices in response to non-regulatory initiatives.”*

Yet, TfL's report on the first two years of the London Code of Conduct shows a number of clear demonstrable benefits, including 2311 days of saved disruption, and increased use of plating; out-of-hours working and first-time reinstatements.

Additionally, there has been no request from Government to either utilities or local authorities for an assessment of the additional costs and benefits arising from the various voluntary initiatives which have been implemented. NJUG therefore asserts that this option has been too easily discounted before it has been fully assessed.

CONSULTATION RESPONSE PRO-FORMA

Consultation on lane rental

PART 1 - Information about you

Name	Les Guest, Chief Executive			
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Postcode	SW1W 0SR			
Email	info@njug.org.uk			
Company Name or Organisation (if applicable)	National Joint Utilities Group Ltd (NJUG)			
Please tick the box(es) from the list below that best describes you /your company or organisation.				
<input type="checkbox"/>	Small to Medium Enterprise (up to 50 employees)			
<input type="checkbox"/>	Large Company			
<input type="checkbox"/>	Utility Company			
	<input type="checkbox"/> Water	<input type="checkbox"/> Gas	<input type="checkbox"/> Electricity	<input type="checkbox"/> Telecoms
<input checked="" type="checkbox"/>	Representative Organisation			
<input type="checkbox"/>	Trade Union			
<input type="checkbox"/>	Interest Group			
<input type="checkbox"/>	Local Government			
	<input type="checkbox"/> County Council	<input type="checkbox"/> London Borough	<input type="checkbox"/> Metropolitan Borough Council	<input type="checkbox"/> Unitary
<input type="checkbox"/>	Central Government			

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<input type="checkbox"/>	Emergency Service			
	<input type="checkbox"/> Ambulance	<input type="checkbox"/> Fire and Rescue	<input type="checkbox"/> Police	<input type="checkbox"/> Other
<input type="checkbox"/>	Member of the public			
<input type="checkbox"/>	Other (please describe):			
<p>If you are responding on behalf of an organisation or interest group how many members do you have and how did you obtain the views of your members: NJUG has 37 utility members and 16 of the major contractors (associate members)</p>				
<p>If you would like your response or personal details to be treated confidentially please explain why: N/A – NJUG is happy for this response to be made public.</p>				



PART 2 - Your Comments

Question	Delete as applicable	Comments
<p>Q1: Do you agree or disagree with the suggested rationale and key principles set out in Chapters 1 and 2 of the draft guidance, and why?</p>	<p>DISAGREE</p>	<p>1) NJUG is not aware of any verified published data that substantiates the need for lane rental, or demonstrates the additional benefits over existing legislation / regulation. Equally, despite industry and individual local authority performance measuring, there has been no overarching review of the effectiveness and costs of all the various provisions introduced over the past few years, including the revised Noticing Regulations (April 2008); [S74 Overstay Charge increases (April 2008); Fixed Penalty Notices (May 2009); and Permit Schemes (January 2010). In particular, the small number of permit schemes mean that evidence of their effectiveness weighed against the total costs is limited. The report so far do not include any analysis of the additional utility costs incurred as a result of permit schemes. NJUG therefore believes more time is needed to better evaluate their impact, before implementing a further layer of regulation and consequent burden on utilities and their customers.</p> <p>Equally, non-regulatory measures such as the HAUC(UK) Code of Conduct and the Performance Scorecard have not had time to be fully implemented and evaluated.</p> <p>2) NJUG continues to believe that the myriad of existing NRSWA legislation, if consistently and effectively applied, (and also applied to highway authority works) provides local authorities with all the necessary powers they need to manage and co-ordinate works to reduce disruption, including the timing of works at certain key locations. (which NJUG recognises may be necessary to reduce disruption).</p> <p>3) Utilities only excavate as a last resort and are already incentivised to work as efficiently as possible, either through the five-year regulatory settlements or customer demand / pressure on prices. Utilities have sustained multi-billion investment programmes to maintain safe, secure and reliable essential utility services, and connect or upgrade customers' supplies, or to divert apparatus to facilitate major transport or urban regeneration. Therefore, these works will still have to take place, regardless of whether Lane Rental is instigated or not.</p>



Recommendation: NJUG therefore believes and recommends that the focus should be on widespread co-ordination and better communication of works, as per the various Codes of Conduct, which have delivered and are delivering, real reductions in disruption. Therefore, DfT, local authorities and utilities should focus on consistent and effective use of existing regulations and the implementation of the HAUC(UK) Code of Conduct.

- 4) As mentioned in the Consultation Documents, efficient Lane Rental costs may be passed on to customers if utility regulators deem these costs to be allowable costs. This will result in increased customer utility bills. In addition, they may experience increased durations potentially imposed by Lane Rental, which may result in services to customers being delayed and increased customer complaints.
- 5) **Section 1.6** – describes local authorities' Network Management Duty (NMD) (Section 59 of the Traffic Management Act 2004). Additionally S56 allows local authorities to direct working at designated pinch points on strategic roads at certain times, and since 1993 S59 of NRSWA 1991 places a statutory duty on local authorities to co-ordinate all works.

Recommendation: NJUG therefore believes that it is essential, and recommends that Government establishes whether all local authorities are fulfilling their Network Management Duty and Duty to Co-ordinate effectively, using all the existing regulatory and voluntary mechanisms, before considering imposing lane rental charges (or the costs of avoiding them) on utilities and their customers.

- 6) **Section 1.8** of the Guidance acknowledges that S74 of NRSWA 1991 is an essential tool, and that utilities have changed their practices in response. S74 is acknowledged as having successfully delivered a step-change reduction in durations, with between 96% (Kent Country council) and 98% (TfL) of works now within agreed durations. **Given that around 50% of works in the street are undertaken by highway authorities, Government will only deliver a real reduction in disruption if it changes primary legislation to regulate highway authority works on an equal basis.**



Recommendation: Therefore NJUG believes that in advance of considering lane rental, Government should introduce S74 and the various other street works regulations for highway authority works.

7) However, if lane rental is to be implemented, then in order to deliver any additional benefits over and above existing legislation, it is vital that it applies equally to highway authority works.

Recommendation: NJUG therefore recommends that if lane rental is to be implemented, Government should amend primary legislation to provide a statutory requirement for highway authority works to be subject to lane rental charges, unless they choose to avoid the charge by working out of hours / using innovative methods to return the carriageway to service during busy times.

8) **Section 1.3** – Relates to the busiest part of the road network. NJUG continues to believe it is essential to establish clear, defined criteria, for inclusion in the regulations, which define when lane rental might apply if a local authority chooses to apply to operate a scheme. **NJUG's view is that a high traffic density-based criteria, with an agreed threshold of a high volume of traffic per hour, below which lane rental charges would not apply, would ensure that only those very busiest streets where congestion is greatest, are subject to lane rental provisions.**

Recommendation: NJUG recommends that DfT works with highway and utility colleagues to develop agreed criteria for inclusion in the regulations, which defines on what basis certain parts / pinchpoints of the road network would be subject to lane rental if an authority chooses to apply to operate a lane rental scheme.

9) Equally, NJUG welcomes the statement in the Guidance that in applying to operate a lane rental scheme, a local authority must demonstrate why the current regulatory and voluntary mechanisms have not worked, and why existing planning and co-ordination is not working, to prove that they have exhausted every other option.

10) **Section 1.12** – NJUG would also ask for confirmation on what discussions DfT have



		<p>had with the utility economic regulators.</p> <p>11) Section 2.3 – As explained within our Detailed Summary, NJUG is very concerned that the Impact Assessment does not recognise that utilities (and highway authorities) will incur significant additional cost should they choose to avoid the lane rental charge by working out-of-hours or using innovative techniques such as plating to restore the road to use during busy periods (See NJUG Detailed Summary Section 2.2. – Additional Utility Costs.)</p> <p>Recommendation: NJUG therefore recommends the Guidance is amended to recognise the additional utility costs from both paying and avoiding the lane rental charges and to require local authorities to provide an accurate assessment of these costs alongside the expect benefits, as part of their application to operate a lane rental scheme.</p>
<p>Q2: Do you agree or disagree the Government should be looking to test the proposed new approach in just one or two places before taking decisions on whether lane rental could usefully be applied more widely?</p>	<p><i>One or two places:</i> AGREE</p>	<p>12) NJUG agrees that if Government is to implement Lane Rental, then NJUG fully supports testing the effectiveness and costs of this approach in one or two areas first. During the trialling of any lane rental scheme it is vital that robust evidence is collected on the impact on reducing congestion (excluding the benefits already gleaned from existing regulation and the London Code of Conduct) and the total costs of the scheme.</p> <p>13) NJUG believes that defined criteria are needed, against which the success of the trial scheme(s) will be measured, and that these should include:</p> <ul style="list-style-type: none"> • The amount of days disruption saved. • The amount of lane rental charged / paid – with an understanding that large revenues would be a sign of an ineffective scheme. • The delivery of substantial benefits which considerably outweigh the total costs of implementing the scheme(s). • The total costs to works promoters in paying or avoiding lane rental charges. • A robust review process to assess the effectiveness of the pilots, and establish all costs and benefits. <p>14) Additionally, NJUG believes that the Regulations should include specific requirements for:</p> <ul style="list-style-type: none"> • Local authorities to demonstrate that they have exhausted all current mechanisms available to them.



<p>Do you agree or disagree that lane rental "pioneers" should be approved only if they have already sought to achieve the desired behavioural changes through a permit scheme?</p>	<p><i>Only if permit scheme:</i></p> <p>AGREE & DISAGREE</p>	<ul style="list-style-type: none">• Highway authority works to be included within any lane rental scheme, with the same conditions applied to all works promoters working on the targeted streets. <p>15) NJUG agrees that lane rental schemes should only be approved if the local authority can demonstrate that they have exhausted the use of <u>all</u> existing legislative, regulatory and voluntary mechanisms available to it, to achieve the outcomes it is proposing for the lane rental scheme.</p> <p>16) However, whilst NJUG agrees that this should include the operation of a permit scheme, we do not agree that it should be limited to permit schemes.</p> <p>Please see our comments in our Detailed Summary Section Paragraph 5.15.</p>
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<p>Q3: Do you agree or disagree that authorities seeking to introduce lane rental should be strongly encouraged to apply the same lane rental charges to their own highway works, and why?</p>	<p>AGREE – that authorities should be subject to lane rental charges, but that this must be mandatory</p>	<p>17) NJUG does not accept that a sound economic case for Lane Rental has been made. But if it is implemented, NJUG believes that, if the Government is serious about reducing disruption, then lane rental must be applied to all street / road activities occurring at the selected strategic road pinch points at the busiest times, and not just 50% of works. We do not therefore agree that local authorities should merely be encouraged to apply the same lane rental charges to their own highway works. Without a specific requirement for highway works to be subject to lane rental charges, and in the current economic climate, there is no compulsion for local authorities to apply charges and conditions to their own works. This is likely to lead to a much smaller reduction in disruption, yet with a high cost to utilities and their customers. In addition, if an authority indicates in its submission when applying to operate a lane rental scheme that it intends to charge for its own works, this must be a clear commitment that subsequent Governments cannot renege on.</p> <p>Recommendation: NJUG strongly recommends that primary legislation is changed to require lane rental charges to apply to all works promoters undertaking works on the targeted streets with the highest levels of congestion (based on an agreed threshold of a high number of vehicles per hour).</p>
<p>Q4: Do you agree or disagree with the proposed exemptions from lane rental charges, and the further expectations as set out in the draft guidance? Do you have a view on whether diversionary works should be subject to lane rental?</p>	<p><i>Exemptions:</i></p> <p>AGREE & DISAGREE</p>	<p>18) NJUG generally agrees with the proposed exemptions listed, and particularly welcomes:</p> <ul style="list-style-type: none"> • Confirmation that the minimum requirement for lane rental charges would be that a street would be traffic-sensitive, but that on its own this would not be sufficient to justify a street's inclusion. • The requirement for proposed schemes to be carefully targeted on the most critical part of a local authority's road network, with the identification of those critical parts to be evidence-based – and that these requirements are necessary to secure Secretary of State approval. <p>19) However, as before, NJUG believes that the identification of where lane rental should apply should be through clear, defined criteria, based on an agreed threshold of a high volume of traffic per hour. The criteria should ensure that only the very busiest</p>



roads with the highest levels of congestion in England are subject to lane rental charges, and that they only apply at traffic-sensitive times, and can be avoided by either undertaking the works out-of-hours or returning the road to service during peak times by use of innovative techniques such as plating.

20) **Additionally NJUG strongly believes that charges should not apply to working at weekends or bank holidays. As well as vastly increasing utility costs it does not then incentivise weekend working over and above normal working days. NJUG assumes that it would be generally beneficial for all works, including in particular, short duration works, to be undertaken at weekends when the traffic-sensitive roads are generally less busy. If the charge is the same for all days, then this will not act as a positive incentive for weekend working. To allow flexibility for the occasional time when weekend working may prove more disruptive Government could include wording in the Guidance referring to S56 of NRSWA 1991 which allows local authorities direct timings of work.**

Recommendation: NJUG therefore recommends that weekends and bank holidays are non-chargeable, although they will of course count when agreeing durations for works .

21) Immediate emergency and immediate urgent works must be attended to immediately and in most cases, cannot be planned to be attended outside rush hours. NJUG is very concerned that the inclusion of immediate works does not inadvertently encourage the wrong behaviours. Utilities have a statutory duty to respond to emergencies within specified times, for good safety and environmental reasons and to restore service to customers. Equally, the Network Management Duty places a duty on local authorities to do everything reasonably possible to ensure expeditious movement of traffic / pedestrians on their network. This includes responding in a timely manner to any failures on the road network, due to accidents, incidents or failure of traffic management equipment. The nature of the works does not allow for any planning element to take place, therefore not giving the opportunity to avoid lane rental charges by planning outside of traffic-sensitive times.

Recommendation: NJUG therefore believes that lane rental charges should not apply to



	<p><i>Diversionary works subject to lane rental:</i></p> <p>Should be / should not be</p>	<p>immediate emergency and immediate urgent works, or at the very least, that they should be exempt for the first 24 hours to address the emergency, and then plan the remaining repair out of hours.</p> <p>22)Robust and accurate traffic-sensitive times data is not always reflected in the NSG data sets.</p> <p>Recommendation: NJUG therefore recommends that any authority applying for a Lane Rental scheme will need to have a robust update of NSG data and have regular reviews of that data. This must be an evidence based system that picks up the critical pinch point data, and does not merely increase the number of traffic-sensitive streets so that revenue can be raised.</p> <p>23)Subject to the exemptions listed, and our comments on immediate works, and consistent with NJUG’s view that if lane rental is to be implemented, charges should apply to all authority works (as well as utility works) which take place on the targeted streets during the targeted (traffic-sensitive) times, NJUG believes that, in those circumstances, lane rental should apply to diversionary works carried out by all works promoters , but only if the regulations are re-written to make those responsible for the Major Highway Works, Major Bridge Works or Major Transport Works (the scheme promoter) to be directly responsible for the full payment of any lane rental charges. Lane rental charges should be excluded from the allowable costs associated with the Street Works (Sharing of Cost of Works)(England) Regulations 2000).</p> <p>This is vital because:</p> <ul style="list-style-type: none"> • Ultimately, in the case of diversionary works, the overall scheme promoter is the works promoter, and utilities (statutory undertakers) are acting as a ‘contractor’ within the boundary of the scheme. • Statutory undertakers recharge all costs (minus any discounts for payment of costs upfront by the scheme promoter) to the scheme promoter, who is requiring the diversion of utility apparatus to take place. Even when discounted to 18% or 7.5%, lane rental costs would
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		<p>add substantially to the utility cost burden associated with diversionary works as the timing and duration of works are subject to the directions placed upon the utility by the works promoter.</p> <ul style="list-style-type: none">• In respect of lane rental charges, we do not believe there would be any benefit in upfront payment by the scheme promoter of lane rental charges, and equally statutory undertakers should not be penalised by having to pay a contribution to lane rental charges arising from works that are only needed to facilitate Major Highway Works, Major Bridge Works or Major Transport Works.
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<p>Q5: Do you agree or disagree that the two principles described in paragraph 2.10 of this consultation document should inform the setting of charge levels in individual lane rental schemes? If you disagree, what alternative principles would you suggest, and why?</p>	<p>AGREE AND DISAGREE</p>	<p>24)NJUG Agrees with:</p> <ul style="list-style-type: none"> • The draft Regulations prescribing a maximum daily charge. • The requirement for local authorities to have to fully justify the proposed level of charges with a robust cost-benefit analysis (CBA) when submitting schemes for approval. <p>However, NJUG believes that such a CBA should specifically take into account a properly researched/validated review of existing street/road works such that the situation and dynamics are fully understood and recorded, and any benefits that arise can be clearly identified.</p> <p>Recommendation: NJUG suggests that an agreed national formula is required to ensure transparency of all costs for all proposed schemes. NJUG is concerned that, as with many permit schemes, authorities will gear schemes towards the maximum charge.</p> <ul style="list-style-type: none"> • <i>The statement that “it will not be acceptable for scheme promoters simply to apply the maximum charges without clear justification.”</i> <p>25)However, whilst NJUG welcomes the recognition that lane rental cannot be avoided by utility companies acting efficiently, and so regulators are expected to make an allowance for those costs when setting overall regulatory price controls. The way this is worded is not factually correct, as the objective of the scheme is to incentivise utilities by allowing them to avoid the charges if the work out-of-hours or return the carriageway to service.</p> <p>However, utilities will either face the additional cost of the lane rental charge or the additional costs of working out of hours or using innovative techniques such as plating (both the cost of purchasing them and the impact on operational efficiency of laying them and removing them each day) – and so the recognition that ultimately an allowance for efficiently incurred costs will be made by the sector’.</p> <p>Recommendation: NJUG recommends a rewording to reflect recognition of the additional</p>
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		<p>costs of both paying and avoiding the lane rental charge, and that economic regulators will be likely to make an allowance for efficiently incurred costs in either circumstances.</p>
<p>Q6: Do you agree or disagree with the maximum level of charge proposed in the draft Regulations? If you disagree, please suggest an alternative and provide evidence to support your view that your proposed alternative would be more consistent with the two principles mentioned above.</p>	<p>DISAGREE (should be lower)</p>	<p>26)NJUG believes that the maximum charge of £2500 per day is excessive and unnecessarily high to achieve its objective. Indeed, some utilities have stated that a charge of £250 a day is excessively prohibitive. Given the volume of works that utilities need to undertake to ensure safe, reliable and secure supplies, connect new customers or divert apparatus for major transport or other developments, even a relatively small charge would significantly increase utility costs. Utilities are already incentivised to undertake street works efficiently through economic regulation and customer pressures. NJUG believes that greater consistency and effectiveness in the application of the myriad of existing legislation / regulation and focus by utilities and authorities of working together to implement the various voluntary initiatives will deliver much greater benefit, without a significant increase in costs to utilities and their customers.</p> <p>27)Equally, the charge will have a disproportionate impact on the cost of some of the activities. A minor telecommunications customer connection currently costing around £50 could cost in excess of £2500 due to proposed Lane Rental charges.</p> <p>28)NJUG believes that as part of the post-implementation review, there should be an independent assessment of the actual charges applied by an authority against the costs incurred by works promoters in either paying lane rental charges or avoiding them, the savings in disruption achieved and the criteria for measuring the success of the scheme (as listed before).</p> <p>29)NJUG believes that the Government’s Transport Policy places a disproportionate emphasis on the need to ‘tackle’ utility street works, whereas applying the same regulatory approach to highway authority works; ensuring consistent application of the myriad of existing legislation / regulation; reducing the volume of traffic on the nation’s road; better managing incidents; and encouraging greater use of public transport will all play a much bigger role and deliver substantially greater reductions in congestion.</p> <p>30)Finally, it is worth recognising that if lane rental delivers additional benefits in terms of</p>



		<p>reduced disruption, then this will benefit motorists who are usually passing through these thoroughfares, but the lane rental charges will be paid for by the residents and businesses who live in the communities where it applies, who will potentially face additional disturbance / longer duration works through night-working or using of plating.</p>
<p>Q7: Do you agree or disagree with the expectations set out in the draft guidance regarding formal and informal consultation and dialogue, and why?</p>	<p>AGREE</p>	<p>31)NJUG supports the encouragement of any dialogue, formal or informal, between works promoters and prospective lane rental authorities (this proved successful throughout the Kent CC Permit Scheme process where NJUG sat on the Steering Group, and a Stakeholder Group was established as the scheme was being set up and implemented and NJUG’s ongoing engagement with TfL over their proposal for a lane rental scheme). The consultation process should be ongoing throughout the development and application of a scheme, along with a robust review process.</p> <p>32)NJUG understands that it is the intention that local authorities will review lane rental schemes one year after implementation and then again in 2016.</p> <p>Recommendation: NJUG strongly believes that it is vital that an independent review takes place. This is borne out by our experience with the two permit reviews undertaken so far, which whilst identifying some key benefits, do not recognise or quantify in any way, the additional costs to utilities. NJUG suggests that one possible solution is for an independent reviewer to be paid for out of the net revenues of the lane rental scheme(s).</p>
<p>Q8: Is there any other information, in addition to that listed in Chapter 4 of the draft guidance that ought to be provided as part of any application to the Secretary of State? If yes, what additional information should be included, and why?</p>	<p>YES</p>	<p>33)NJUG generally welcomes the information outlined within the draft Guidance, that will be required as part of a lane rental scheme application. But in addition, NJUG believes there needs to be a proven stringent benefit to be gained before a scheme is introduced.</p> <p>34)It is also vital that authorities must demonstrate that they have fulfilled their Network Management Duty to the best of their ability, including managing their own works in the same way as they manage utility works when applying to operate a scheme.</p> <p>35)It is essential that all prospective lane rental authorities are required to publicise their intent of running a scheme, highlighting to residents the potential impact the scheme will have on out- of- hours working as well as the possible benefits of</p>



		<p>reduced traffic disruption.</p> <p>36)As before, NJUG is concerned that any lane rental scheme will largely benefit road users who often pass through the area where works are taking place, yet the lane rental charges (or the costs of avoiding them) will ultimately be borne by residents.</p>
<p>Q9: Do you agree or disagree with the proposed criteria against which applications would be assessed, and why?</p>	<p>DISAGREE</p>	<p>37) NJUG welcomes the confirmation of the criteria that will be used, and the factors the Secretary of State will consider when determining whether or not to approve a proposed lane rental scheme. In particular, NJUG welcomes the inclusion of:</p> <ul style="list-style-type: none"> • Consistency with the relevant legislation, Codes of Practice and Guidance. • Whether the authority has demonstrated that the proposed scheme can reasonably be expect to deliver benefits that justify the likely cost. NJUG believes that such benefits should be considerable so that they will make a demonstrable difference to congestion, as otherwise there is a risk that yet more legislation could be proposed if lane rental does not deliver significant additional benefits over and above the existing regulations. • Specifically, that the benefits to businesses are likely to exceed the costs. • Whether a robust evaluation plan is in place, although NJUG strongly believes that in addition to any authority evaluation, an overall independent evaluation of the likely two schemes is essential before a decision is taken to consider approving further schemes. • Additionally, NJUG believes it is vital that there should be an express requirement for any applications to operate lane rental schemes include likely costs of utilities in operating within that scheme area. These should include not only likely lane rental charges but also the cost of avoiding those charges, and therefore authorities should be encouraged to involve utilities in the development of the draft schemes as early as possible. <p>38)As well as the criteria against which applications would be assessed, any proposed</p>



		<p>scheme needs to be very specific on the criteria and stipulation of the types of roads to be included in the scheme, and as before, NJUG believes that volume of traffic-based criteria, with an agreed numbers of vehicles per hour threshold, below which lane rental charges cannot apply, should frame the development of all schemes.</p>
<p>Q10: Do you agree or disagree that local highway authorities should apply the net revenues from lane rental schemes to help reduce future disruption caused by street works, and why?</p>	<p>AGREE AND DISAGREE</p>	<p>39)NJUG strongly believes that, if the streets subject to lane rental are carefully selected and small in number, a successful outcome of any lane rental scheme should be no or minimal net revenues, because the objective of lane rental is to reduce disruption by incentivising utilities (and highway authorities) to avoid the charge by working out-of-hours or using innovative techniques such as plating to return the road to service during traffic-sensitive times.</p> <p>40)Equally, revenues must be received from <u>all</u> works promoters not just utilities.</p> <p>41)However, within this context, NJUG supports all innovative initiatives to help reduce disruption, including the net revenues from any lane rental scheme being ring-fenced for use in helping to reduce disruption.</p> <p>42)Given that utilities and their customers will make a significant contribution to lane rental net revenues, NJUG believes that, on behalf of their customers, NJUG / utilities should play a key role, working with the scheme promoter(s), to identify how any monies may best be spent.</p> <p>Recommendation: NJUG therefore recommends that the Guidance includes a requirement for NJUG / utilities to be involved in the decision on allocation of any net revenues arising from lane rental schemes.</p> <p>43)Specifically, we support the majority of proposed activities listed including:</p> <ul style="list-style-type: none"> • Research and development – although, given the likely importance of any research for the whole sector, it would seem sensible for the likely two scheme promoters and NJUG / utilities to work together in the development of any scope for research and development projects, and potentially in combining part of the revenues from the two schemes if



		<p>appropriate.</p> <ul style="list-style-type: none"> • Infrastructure works to minimise the disruption caused by future works (e.g. pipe subways). <p>44) However, NJUG does not support the use of lane rental revenues to enhance the skills and capacity of the local authority staff charged with managing street works and assessing the proposed duration of works. These activities should be part of the local authorities' own budget and responsibility, and their inclusion could act as a perverse incentive, changing the local authority's focus from working with utilities and their own highway authority colleagues to reduce disruption by avoiding the charges, into a revenue generation mechanism for the purpose of resource and training of authority staff.</p> <p>Recommendation: NJUG therefore recommends the removal of the use of net revenues to enhance the skills and / or capacity of local authority staff.</p> <p>45) Finally, as mentioned previously some of the income would be best applied on independent lane rental scheme evaluation and an authority's effectiveness in carrying out its network management duties. Equally, NJUG would support revenues being used to evaluate of the implementation and effectiveness of the myriad of existing legislation, which is not always utilised to the full by authorities, would be invaluable in enabling further sharing of good practice.</p> <p>Recommendation: NJUG therefore recommends that these two examples are included in the Guidance.</p>
<p>Q11: Do you have any practical suggestions as to how schemes might be designed to minimise any risk of safety being compromised?</p>	<p>YES</p>	<p>46) NJUG has several suggestions which might assist in minimising the risk of safety being compromised:</p> <ul style="list-style-type: none"> • There will be circumstances when working at night may not be possible for safety or operational reasons. It is recognised that works promoters will know best how and when to carry out works safely. If a works promoter chooses to pay the lane rental charge instead of undertaking works out-of-hours, then it is vital that the local authority does not



unduly pressurise them to work at night if it would be unsafe to do so. Instead, we would expect them to work closely with the works promoter to minimise the disruption through careful planning and design.

Recommendation: NJUG therefore recommends that the guidance is amended to make it clear that local authorities should not unduly pressurise works promoters to work at night if it would be unsafe to do so. Instead they should work with the works promoter to minimise disruption as much as possible by forward planning, good site design and consideration of innovative working methods as appropriate.

- NJUG would like to reiterate its concerns over the application of lane rental charges to emergency works (as per our comments in the covering letter, Executive Summary and our answer to Q4). Utility or highway authority emergency works are by their nature essential to the preservation of life, property, security of supply, and / or the expeditious movement of traffic, as well as avoiding damage to the utility or road network.

Recommendation: NJUG therefore recommends that emergency works are not subject to lane rental charges, or at the very least, that they should be exempt for the first 24 hours to address the emergency, and then plan the remaining repair out of hours.

- NJUG is also concerned that the safety, vulnerability and effectiveness of the workforce working in the dark will be at risk (lack of light, and personal attacks to the work force from drunks and angry customers). Further supervision at night may therefore be required for some jobs, which will further increase costs to utilities. Additionally, night working (to avoid Lane Rental charges) may affect the way in which reinstatement is undertaken, with the need to provide hot boxes to reinstate (due to lack of correct materials outside of normal supplier opening times). This will result in a further cost burden being imposed upon the utility industry.

Recommendation: NJUG therefore recommends that these issues are highlighted in the Guidance so that local authorities can take them into account when preparing their assessments of potential costs, as part of their rigorous cost benefit analysis before submitting their lane rental scheme applications, and the issues are also considered as

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		part of the post-implementation reviews.
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<p>Q12. Do you agree or disagree that information about lane rental charges should be made available via the National Street Gazetteer, and why?</p>	<p>AGREE</p>	<p>47)It is essential to that all data, information, dates, times etc are recorded and viewable on the NSG to assist planning. This includes the specific coordinates of the pinch points on specified strategic roads subject to lane rental, and when charges apply. In order to co-ordinate and execute planned works most efficiently, works promoters will need to able to quantify the charges that will be passed onto customers.</p> <p>48)Additionally, the information should be in a data format which allows integration with works promoters' work management systems.</p>
<p>Q13. If you are a local authority contemplating a lane rental scheme, have you identified any likely need for amendments to the EToN technical specification? If so, why do you believe such amendments are needed?</p>	<p>N/A</p>	<p>49)As per Q12, it is vital that the requirements of utilities are also considered, as the EToN information needs to be compatible with works management systems to be relayed to works orders through to contractors and operatives.</p> <p>Recommendation: Therefore, NJUG recommends that the EToN Developers Group, the HAUC(UK) Co-ordination and EToN Strategy Groups and GeoSpace, who manage the NSG are all actively involved at an early stage of the development of any lane rental scheme proposals.</p> <p>50)Additionally, the EToN upgrades required to facilitate Lane Rental will be an additional cost to the utility industry and therefore an additional burden on industry.</p> <p>Recommendation: The additional costs of EToN upgrade(s) should be included in the revised Impact Assessment.</p>
<p>Q14: Do you have any comments on the consultation-stage impact assessment, or any data or analysis that would enable the Department to refine its analysis of the costs, benefits and other impacts</p>	<p>YES</p>	<p>51)With regard to pages 1, 6 and 11 NJUG supports Option 3 where a non-regulatory approach is based on Voluntary Codes of Practice. .</p> <p>Recommendation: NJUG suggest that reference is made within the Guidance to the various voluntary initiatives as ways in which local authorities should consider in seeking to address disruption, prior to developing a lane rental scheme. These should include the NJUG Vision for Street works, the HAUC(UK) Code of Conduct and Performance Scorecard, along with Considerate Contractor schemes, all of which</p>



likely to arise from real-world lane rental schemes?

endorse working together with authorities to reduce disruption.

52)NJUG does not believe that the DfT have given the effects of the Traffic Management Act 2004 provisions introduced over the past few years, sufficient time to bed in and be evaluated.,

Recommendation: NJUG therefore advocates a full review of the effectiveness and costs of existing legislation / regulation is undertaken before progressing with lane rental.

53)**Page 9 – Evidence Base** – *“Authorities operating permit schemes are required to carry out a proper evaluation of their schemes based on evidence from their first year of operation”*. As with all current Cost Benefit Analysis data, the impact assessment is based upon model statistical figures. NJUG believes that actual historic data should be a mandatory requirement for authorities to submit to the Secretary of State to enable him / her to assess any lane rental proposals received..

54)NJUG believes that an independent assessment of all the respective costs and benefits of the range of TMA provisions should be undertaken, along with a definitive study on the causes and costs of congestion, before a final decision is taken to introduce lane rental, and in any case, to establish a baseline against which any pilot lane rental schemes can be assessed against.

55)NJUG is concerned that the evidence base is totally based around TfL data, with no analysis of any other data from around England. NJUG is concerned to ensure that lane rental is not viewed as a widespread solution across England, which is why we are advocating a high traffic density-based criteria to ensure that if Government decide to implement lane rental, it is applied only to the pinchpoints of the busiest streets at the busiest times, and only in cities where there are significant numbers of critical pinchpoints.

56)**Page 10 – Financial Incentives** – NJUG seeks assurances over how Lane Rental schemes will be monitored to ensure the scheme delivers substantial benefits, over and above the very significant costs works promoters will incur



57)**Page 11 - Option 2** – NJUG believes that if this option is chosen then the increase in Permit Conditions needs to be tied into occupation of the highway only, and regulations need to be explicit on types of condition breaches.

58)**Page 12** – *“Highway Authorities need to work closely with local environmental health departments...”* Our comments within our Executive and Detailed Summary apply. NJUG is concerned that given that the whole premise of the lane rental scheme, as drafted, is to move works on targeted streets from traffic-sensitive times to non-traffic-sensitive times, NJUG believes that operational efficiency could be severely dented if, to avoid the lane rental charge works promoters cannot start work before 8pm (as per examples in the TfL consultation) and then Environmental Health Officers preclude works after 11pm. .

59)NJUG believes there should be a robust independent appeals mechanism open to works promoters, and **strongly suggest that charges are waived if works promoters are forced to work either fully or partly in lane rental / traffic-sensitive periods due to environmental health or safety constraints.**

Recommendation: NJUG believes that the exemptions list is expanded to exclude works that cannot be undertaken during lane rental periods during to environmental health or safety constraints.

60)**Page 13 – TfL’s analysis** – Whilst NJUG accepts that TfL’s analysis is applicable to London, we would question its validity for the rest of England, and would suggest that further analysis should take place before Lane Rental is trialled or ultimately considered elsewhere.

61)**Page 16 – Option 3 –Benefits** – *“initial indications from the London Code of Conduct are positive”*. The London Code of Conduct has delivered 2311 saved days of disruption on the TLRN in its first two years. This is encouraging and NJUG believes that greater emphasis on voluntary initiatives such as the Code and the NJUG Vision as well as consistent and effective use of the existing regulatory initiatives will deliver greater results for far less cost.



	<p>62) Utilities are already heavily regulated to drive for cost improvements and quality to focus on customer service, efficiency of operations, and safety. NJUG challenges the value of the Halcrow report as it is out of date and was scant in data at the time of publishing as only a small percentage of authorities provided information.</p> <p>63) The new Performance Scorecard is an ideal measure for helping to evaluate the effectiveness of current legislation and should be given time to be effective before introducing yet more legislation / regulation.</p> <p>64) The added burden to utilities has not been included within the Impact Assessment. On top of the lane rental charges, utilities will have additional costs in the following areas:</p> <ul style="list-style-type: none">• Premium labour rates for out-of-hours working; shift allowances etc.• Contractors Terms & Conditions addendums to reflect the social and economic cost of out-of-hours working.• Operational changes in order to provide enhanced out-of-hours back-office support to field operatives and contractors.• Systems upgrades – ETON, finance, works management systems, hand-held devices.• Training, additional recruitment / refreshment to reflect that many existing operatives may not wish to work at night. <p>Recommendation: All of these additional costs should be included in the Impact Assessment and reference to them should be made in the Guidance, to assist local authorities when developing their robust cost benefit analysis to accompany their lane rental scheme application.</p> <p>65) NJUG believes that the cumulative effect of the administrative burden placed on utilities by the current and proposed legislation needs a thorough review before any further regulations are considered.</p>
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<p>Q15: Do you agree or disagree that an expiry date should be included in the Regulations as proposed, and why?</p>	<p>AGREE</p>	<p>66)NJUG strongly supports the inclusion of a sunset clause allowing the removal of the lane rental Regulations if they do not deliver considerable benefits that significantly outweigh the additional costs incurred by works promoters, but that the sunset provisions should take effect after 3 years, and not 7 years as proposed.</p> <p>67)The NRSWA revised Noticing regulations and Fixed Penalty Notices implementation under the Traffic Management Act 2004 have not been evaluated for effectiveness by the DfT before the introduction of permit schemes. Whilst those local authorities who have introduced permit schemes have undertaken their own review, the reviews have not assessed the additional costs incurred by utilities against the identified benefits. NJUG therefore questions the basis on which Lane Rental is being introduced without understanding the impact of the range of Traffic Management Act 2004 provisions, and various voluntary initiatives that have been introduced over the past few years. This seems contrary to the Government's better regulation principles of:</p> <ul style="list-style-type: none"> • Encouraging voluntary / self-regulatory initiatives before considering regulating. • Considering enhancing existing legislation / regulation before introducing new regulations. • Not increasing the regulatory burden on business.
<p>Q16: Do you have any other comments on (a) the draft guidance, or (b) the draft Regulations?</p>	<p>YES</p>	<p>Draft Regulations</p> <p>68)6(1)(a) <i>'a street which is not a traffic sensitive street'</i> (exemptions).</p> <p>Recommendation: NJUG suggest that this is added as an exemption in the Guidance Document, as it is currently not included.</p> <p>69)Given the Government's commitment to not adding a further burden on business, NJUG would ask for clarification on how the <i>'one-in / one-out'</i> principle is being applied in respect of lane rental. The cost to utilities will be considerable in either paying or avoiding lane rental charges and therefore we are keen to understand what regulations of an equivalent value will</p>



		<p>be removed.</p> <p>70)Where a lane within a traffic-sensitive street is designated to allow parked vehicles, , NJUG believes that it is inappropriate to levy lane rental charges if works can be accommodated / undertaken within the confines of the parking lane, particularly if vehicles are parked either side of the works and therefore the road is unavailable for moving traffic anyway.</p> <p>71)NJUG also questions whether is it appropriate to levy daily charges, when charge bands are provided during certain hours of the day?</p>
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