

# Street works: fines and lane rental surplus funds

## Introduction

Thank you for responding your information will help to define our proposals for reforms to street works legislation covering surplus lane rental funds, fixed penalty notices and weekend overruns.

Closing date is 11 March 2024.

## Accessibility statement

Read our [accessibility statement for SmartSurvey forms \[opens in a new window\]](#).

## Confidentiality and data protection

The Department for Transport (DfT) is carrying out this consultation to to define our proposals for reforms to street works legislation covering surplus lane rental funds, fixed penalty notices and weekend overruns.

The [DfT online form and survey privacy notice \[opens in a new window\]](#) gives more information on how your personal data is processed in relation to this survey.

In addition to the information outlined in the privacy notice, we are asking for the name of your organisation for identification.

## Personal details

### 1. What is your name?

### 2. What is your email?

### 3. Are you responding on behalf of an organisation? \*

- Yes
- No (Go to 'Proposals')

# Organisation details

## 4. What is the name of your organisation?

Association of Directors of Environment, Economy, Planning and Transport

## Proposals

We are proposing a series of reforms to street works regulations.

We are asking for your view on our reforms of:

- requiring at least 50% of any surplus lane rental funds to be spent on repairing potholes
- raising the level of fixed penalty notices that can be issued for the street works offences of:
  - failing to send work start - stop notices on time
  - failing to send notice of reinstatement being completed on time
  - working without a permit
  - breaching permit conditions
- allowing overrun charges to apply at weekends and bank holidays

Implementing these proposals would involve amending the secondary legislation from:

- [Street Works \(Charges for Occupation of the Highway\) \(England\) Regulations 2012 \[opens in a new window\]](#)
- [Street Works \(Fixed Penalty\) \(England\) Regulations 2007 \[opens in a new window\]](#)
- [Traffic Management Permit Scheme \(England\) Regulations 2007 as amended \[opens in a new window\]](#)
- [Street Works \(Charges for Unreasonably Prolonged Occupation of the Highway\) \(England\) Regulations 2009 \[opens in a new window\]](#)

Greater information as to our reasoning and actions is available in our consultation documentation [\[opens in a new window\]](#).

## 50% surplus lane rental funds to be spent on pothole repair proposal

We are proposing that a minimum of 50% of surplus lane rental funds should be spent by highway authorities on repairing potholes, regardless of the cause of the pothole.

### 5. Do you support or oppose our proposal that a minimum 50% of surplus lane rental funds are spent, by highway authorities, on repairing potholes?

- Support
- Oppose
- Don't know (Go to 'Fixed Penalty Notices')

## Minimum 50% surplus lane rental funds to be spent on pothole repair proposal: reasoning

### 6. Why?

Local Highway Authorities are currently facing significant budgetary and resourcing constraints around highway maintenance. This is making it increasingly difficult for Local Highway Authorities to carry out sufficient preventative maintenance work which leads to more potholes forming or to repair the increasing number of potholes occurring on the network in a timely fashion before they become a higher category defect.

The strain on Local Highway Authority budgets and resources has intensified in recent years as a result of rising staff and material costs, increasing demand for all aspects of maintenance works due to greater volumes of traffic on the road network as well as the impacts of climate change such as increased flooding.

ADEPT welcomed the Government's recent announcements regarding investment in road maintenance. The additional £200 million allocated for pothole repairs in Spring 2023 and the £8.3 billion earmarked for resurfacing and repairing local highways in November 2023 are positive steps. However, further investment is necessary to address the ongoing budgetary challenges faced by local highway authorities.

For the above reasons, ADEPT supports proposals that allocate a minimum of 50% of surplus lane rental funds to pothole repair. This however should be widened out to include patching and resurfacing works, particularly at sites where statutory utilities companies have shortened the life of the road. This flexibility would significantly boost the Local Highway Authority's ability to not only deal with greater volumes of potholes but also prevent further defects forming. Additional funding will help Local Highway Authorities invest in resources to address pothole and resurfacing issues more quickly. This will potentially provide longer term cost savings as

intervention can take place at a time that will prevent more extensive damage occurring to the carriageway.

Public and political pressure tends to always be concerned with fixing potholes. The flexibility to allocate surplus lane rental funds to patching and resurfacing would help move more maintenance activities away from the reactive approach as advocated by “*Well Managed Highways Infrastructure: Code of Practice*”.

While ADEPT acknowledges that reactive road maintenance is a critical priority, it is crucial to strike a balance. For this reason, ADEPT believe that it is important that the Government supports patching and resurfacing works as well as. In addition, ADEPT would advocate for Government continuing to work with Local Highway Authorities to develop a longer-term strategy for local highway maintenance.

It is critical that the current levels of road maintenance funding are safeguarded. Any utilisation of surplus lane rental funds by Local Highway Authorities should not lead to a reduction in road maintenance funding received from central Government. This approach would also help ensure that existing schemes and projects funded by the lane rental surplus are not significantly disadvantaged (i.e. lead to all surplus funding being directed towards road maintenance).

## Fixed Penalty Notices

We want to raise the limit of fixed penalty notices which have not been amended since 2007, relating to street works offences:

- failing to send work start - stop notices on time
- failing to send notice of reinstatement being completed on time
- working without a permit
- breaching permit conditions

We are asking for your views on whether increasing fine levels would provide a greater deterrent and improve general compliance.

If FPNs had been linked to the level of inflation, but not including the high levels that have been in place up until winter 2023, we calculate the appropriate FPN fines (rounded) would now have risen from:

- £500 to £700
- £300 to £425
- £120 to £170
- £80 to £115

We are proposing 2 options for raising the amount of fixed penalty notice (FPN) charge that is payable, these options are:

- option A would raise fines in line with inflation since 2007, which was the last time levels were raised, this would mean would mean FPNs amounts of £170 full charge and £115

discounted charge for offences and breaching permit conditions. FPNs would be £700 full charge and £425 discounted charge for working without a permit

- option B would double the level they are now meaning FPNs of £240 full charge and £160 discounted charge for offences and breaching permit conditions – raising them from £120 and £80. FPNs would be £1,000 full charge and £600 discounted charge for working without a permit – raising them from £500 and £300

#### 7. Your preferred option to be implemented is:

- option A?
- option B?
- that the FPNs are not altered?

## Option reasoning

#### 8. Why?

Street work offences have a significant impact on the operation of the local highway network. It can result in significant disruption for local communities and businesses and lead to extended periods of delay and congestion for users of the local highway network. The sheer volume of street works arising from the requirements of the utility companies, the highway authority and those associated with new developments often mean communities are constantly experiencing delays and diversions in their local area. This is a great source of frustration for road users as well as a direct cost for business as their deliveries and workers are delayed.

While ADEPT supports the doubling of existing Fixed Penalty Notices (FPN), we would advocate for higher rates than option B. Current penalty charges, and in ADEPT's view, those set out in option B, would not be sufficient to instil greater compliance from the main parties. A fine of £240 (£160 discounted) is insignificant to most parties and some organisations work on the premise that the fine is only a very small on-cost to their works. For example, permit conditions that relate to manual control of signals, longer working hours and out of hours working would cost substantially more than the cost of paying an FPN for noncompliance. ADEPT would also support higher penalties for repeat offenders (for the same offence) and / or an escalation of the fine with each offence. If, however, DfT is not minded to increasing FPN rates further than the options set out in this consultation, then ADEPT would support Option B.

ADEPT member's experience is that existing FPN amounts for street work offences do not cover costs of inspections. The proposed amounts under Option B may cover costs under some circumstances. If FPN cannot cover Local Highway Authorities costs in monitoring and enforcing street works offences, this could lead to low levels of monitoring and enforcement. This in turn could discourage utility companies from fully complying with any permit conditions.

# Overrun charges at weekends

We propose amending the [2009 charges regulations to allow overrun charges \[opens in a new window\]](#) to be applied at weekends and bank holidays.

We are subsequently proposing applying FPNs to late submission of works start and stop notices at weekends and bank holidays.

## 9. Do you support or oppose:

	at weekends?	At bank holidays?
overrun charges being applied:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
FPNs being available for late submission of works start and stop notices:	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>

Why?

### Overrun Charges

At peak times, traffic on weekends and bank holidays can be as heavy as during the traditional AM and PM weekday peaks. As a result, the effects of overrunning street works on weekends and bank holidays—such as congestion and delay—can be equally severe for residents and businesses as those experienced on weekdays.

Furthermore, in many locations, street works activities are limited to weekdays, if there is an overrun, this can result in street works sites being left up over weekends and bank holidays with no penalty. This can lead to considerable additional frustration for highway users, particularly if the street works have already overrun.

For the above reasons, ADEPT agree with the proposed amendments to the 2009 regulations to allow overrun charges to be applied at weekends and bank holidays. This would ensure that utility companies are held accountable for the impacts that overrunning street works have at weekends and on bank holidays, but also encourage swifter resolutions to overrunning street works when they have extended into a weekend or bank holiday (i.e., encouraging utility companies to work over a weekend or bank holiday to resolve the issues rather than waiting until the next weekday).

Many utility companies currently see the weekends as two free days to clear a site following the completion of any works. The application of overrun charges is likely to encourage more timely clearing of street works sites.

### Late Start and Stop Notices

ADEPT support applying Fixed Penalty Notices (FPN) to late submission of works start and stop notices at weekends and bank holidays as this will ensure Local Highway Authorities have an up to date picture of the works being undertaken on their network. At present the failure to receive start / stop notices on time means that Local Highway Authorities do not have the knowledge of

when a scheme finishes, impacting the coordination of other works and increasing the risk of congestion.

The application of FPNs should encourage greater compliance and enable Local Highway Authorities to respond / mitigate the impact of any street works. This approach will also ensure more timely information on the status of street works can be communicated to the public via sources such as one.network.

## Final comments

### 10. Any other comments?

#### **Local Highway Authority Resourcing**

It is unlikely that any improvement in compliance will occur if Local Highway Authorities do not have the funding and / or resources to monitor and enforce street work offences or late submission of start/ stop notices.

Network coordination is increasingly becoming a 7-days a week service. To reflect this Local Authorities will increasingly need to adjust staffing and shift patterns to provide the necessary weekend and bank holiday cover. There are significant resources required to implement and manage street works offences within Local Highway Authorities.

At present, where a breach of conditions has occurred, Local Highway Authorities often lack the necessary resources to commence legal proceedings. If Local Highway Authorities are provided with greater resources to investigate, enforce, and prosecute breaches of conditions, it could serve as a stronger deterrent than any increase in the level of FPN's.

For this reason, it is important that Local Highway Authorities have sufficient resources to validate street works offences as well as the administration to process and enforce results. Local Highway Authorities must not be restricted from using revenue generated from Fixed Penalty Notice's (FPN) to offset any officer and administration costs.

Additional resources would also enable Local Highway Authorities to issue more FPN for street work offences / submission of late start/ stop notices which in turn would provide the Local Highway Authority with additional funding for other areas and services.

#### **Availability of Lane Rental Scheme Surplus Funds to All Local Highway Authorities**

There is a risk that Local Highway Authorities without lane rental schemes may be disadvantaged as they will not have access to a new source of revenue for road maintenance. The Government must work with Local Authorities to establish lane rental schemes or ensure other sources of road maintenance funding is made available. At present the existing process to establish lane rental schemes is complex and requires the Secretary of State's approval. As such ADEPT would broadly support any changes that make it easier for Local Highway Authorities to set up lane rental schemes. ADEPT is aware that West Sussex has been working with DfT to create a simplified version of the process.

#### **Changes to the Permit System**

The lane rental scheme does not distinguish between contractors undertaking work within the highway (e.g. work being undertaken on behalf of statutory utility companies and work being

undertaken on behalf of Local Highway Authority etc.). The Permit System supports a difference between works undertaken by utilities companies and works undertaken by Local Highway Authorities. To make Local Highway Authorities more accountable, a change to the Permit System to better align it with the lane rental scheme could be considered.

#### **Additional Governance and Administration Costs associated with Spending Surplus Lane Rental Funds**

The spending of surplus lane rental funds is likely to require governance and there is likely to be a defined financial control that need to be adhered to by the Local Highway Authority. This is likely to result in additional administrative costs for Local Highway Authorities which already are significantly resource constrained.