

# **The Traffic Management Act 2004 (TMA) – An Update**

A report by the Director, Kent Highway Services, to the Highways Advisory Board on 6<sup>th</sup> March 2007

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## **Introduction**

1. This report provides an update on the progress of the Traffic Management Act (TMA) which gained Royal Assent in 2004 and the accompanying Intervention Criteria which may be used by the Secretary of State and the Department for Transport should a local authority be seen to be failing in its duties under the TMA. A summary of the key issues set out in the TMA are detailed below. A fuller summary can be seen in Appendix 1 to this report.

## **Summary of main report**

2. The following list is a summary of the main report highlighting the key areas to be aware of:
  - The TMA requires that the whole local authority, not just the highways department, to be aware of and take account of the implications of the duty.
  - The Network Management Plan will be reviewed and reported upon every year in line with the reporting process for the LTP.
  - If an authority fails to perform its network management duty, then the Act provides for the Secretary of State and the DfT to intervene and appoint a “Traffic Director”.
  - Permit Schemes are designed to give LA’s further control over works on the highway.
  - Permit Schemes will be designed to run as ‘cost neutral’. Estimated figures indicate that income from a Permit Scheme may run to £2 million per annum
  - Non-refundable cost of managing KHS works through a Permit Scheme will be in the region of £850k per annum.
  - The DfT will give LA’s a six-month period to establish the permit process.
  - KCC do have an option of concentrating on Electronic transfer of Notices (EtoN) to improve works co-ordination rather than adopting a Permit Scheme.
  - The introduction of Fixed Penalty Notices (FPN) will bring financial penalties to works promoters for incorrect information that adversely affects roadworks co-ordination.
  - The FPN’s will also be applied to local authority roadworks. These penalties will be recorded against performance indicators and will not be a financial restraint.
  - DfT has completed its consultations for the FPN scheme and has indicated that the regulations are expected to come into force during mid - late 2007.
  - The Act requires local authorities to commence the noticing of their own roadworks. This will increase notices by 40% to over 70,000 per annum.
  - Estimated that KHS will require 12 roadwork co-ordinators to manage these notices to ensure the scheme operates to its full potential.
  - It may be possible to improve the processing of notices by investing in technology such as hand held equipment for the Highway Inspectors.
  - DfT has indicated that guidelines for a FPN offence will not be issued and have indicated that legal procedures could be through Magistrates Courts.

## **Financial Implications**

3. It is estimated that 5% of notices may attract an FPN. With effective management, an annual income of £640,000 could be achieved.

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4. The current Medium Term Business Plan for the Directorate does not reflect and specific budgetary implications arising from this legislation due to the present uncertainty on how the Government will direct the implementation of its financial aspects. However, the cost of a Permit Scheme for Kent, estimated at £2.83m, will be self-funding. It may be necessary, however, to “pump prime” start-up costs which will be recoverable once the scheme is operational.

### Conclusions

5. Until the Regulations pertaining to Permit Schemes and Fixed Penalty Notices have been placed before Parliament, it is not possible to provide exact budget figures. However, from consultation documents released by the DfT and examination of our current procedures, it will be necessary to provide both budget and staff resources if KCC wish to run a Permit Scheme.
6. The introduction of FPN's which are likely to come into force in the Autumn of 2007 will require investment in staff resources. Without this investment, KCC will fail in its Network Management Duties and may face the prospect of Intervention procedures by the Secretary of State and the DfT. Although an income stream will become available to balance out these requirements it is likely that both the workload and the income will be higher within the first year of operation.
7. Monitoring systems and procedures along with close communication and liaison links must be established with the local District Authorities in order that close supervision can be carried out with regard to their Civil Enforcement operations. This will be essential to prevent KCC being affected with regard to the TMA 2004 and the associated Network Management Duties.
8. Members are asked to consider the preliminary conclusions and offer their views in order to prepare for the release of the regulations relating to the TMA and the associated Network Management Duties.

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## The Traffic Management Act 2004 (TMA)

### Background

1. The Traffic Management Act gained Royal Assent in July 2004 with the aim of 'tackling congestion and reducing disruption' on the road network. The Act contains 7 parts:
  - **Part 1 - Traffic Officers**
    - Part 1 empowers the Secretary of State for Transport, in his capacity as highway authority for Motorways and Trunk Roads to establish an uniformed on road traffic officer service to manage the traffic consequences of random incidents (such as crashes, obstructions, debris and breakdowns). They are also required to manage programmed highway events such as the passage of abnormal loads. The Act provides for the traffic officers to have the powers to stop and direct traffic and to place traffic signs to keep traffic moving.
  - **Part 2 - Network Management Duty by local traffic authorities**
    - Part 2 imposes a duty on all local authorities to secure the expeditious movement of traffic on their road network. Authorities are required to make arrangements for planning and carrying out the actions to be taken in performing the duty. If an authority fails to perform its network management duty, then the Act provides for the Department for Transport (DfT) to intervene and appoint a "Traffic Director" in relation to that authority.
  - **Part 3 - Permit Schemes**
    - Part 3 provides for the introduction of a permit scheme. A permit scheme would control specific works in the street in a particular area and would require a permit to be obtained for such works. This would apply to roadworks and streetworks.
  - **Part 4 - Streetworks**
    - Part 4 provides for the change to the regulatory regime for utility companies' street works. The Act also provides for the increase in levels of fines of specific offences, and provides for highway authorities to issue Fixed Penalty Notices for certain offences.
  - **Part 5 – Highways and Roads**
    - Part 5 only applies to London. It includes the specific measures that alter the arrangements for traffic management in London. These include provisions for the Secretary of State to designate an initial network of strategic roads.
  - **Part 6 - Civil Enforcement of Traffic Contraventions**
    - Part 6 includes powers providing a single framework to make regulations for the civil enforcement by local authorities of parking and waiting restrictions, bus lanes and some moving traffic offences (yellow box junctions and banned turns) including the use of camera evidence.
  - **Part 7 - Miscellaneous and General**
    - Part 7 contains general provisions, including those relating to Blue Badges, for the application of surplus income from parking places, and financial provisions for the establishment of traffic offices.
2. The TMA requires that the whole local authority, not just the highways department, be aware of and take account of the implications of the duty and that the Traffic Manager liaises and co-ordinates with every department within that local authority.

## **Progress to date**

### **3. Part 1 - The Introduction of Highways Agency Traffic Officers (HATO's)**

Part 1 of the Act has already come into force. The Highways Agency has introduced Traffic Officers across the country on the Motorway Network. They are employed to assist the traffic police and motorists with incidents on the Motorway Network. Traffic Officers have been active in the Southeast of England since August 2005.

### **4. Part 2 - The Network Management Duty**

Part 2 of the Act came into force in January 2005. Under this part the Act requires all local traffic authorities to appoint a Traffic Manager. Kent County Council (KCC) has had a Traffic Manager in post since 2004. The current Traffic Manager is Lloyd Holliday.

5. KCC published its Network Management Plan 2006-11 in July 2006 as a guidance framework to the Network Management Duty. This plan compliments the Local Transport Plan 2006-11 and is appended under Annex 1. The Network Management Plan will be reviewed and reported upon every year in line with the reporting process for the LTP.

6. The formal consultation documents for the Intervention criteria, which give the DfT the powers to intervene in a failing authority, have also been returned with these powers expected to come into force early in 2007.

### **7. Part 3 - Permit Schemes**

Permit Schemes are designed to give the local authority further control over all works on the highway. It is intended that local authorities will have powers to direct all roadworks and streetworks with regard to where, when and how they may be carried out, ensuring greater co-ordination and control.

8. The DfT are currently consulting widely on the operation of a Permit Scheme. This consultation is due for return to DfT by 26<sup>th</sup> February 2007. The DfT have now indicated that the making of these regulations are estimated for mid 2007 with the estimated date of the regulations coming into force late in 2007. KCC has indicated that they wish to run a Permit Scheme.

9. The Permit Scheme will be designed to run at 'cost neutral' so any income received from the utility companies balances the cost of running the scheme for their work but not for our own highway works. KHS must submit permits for their own works in the same manor as the utility works. This is a requirement of the DfT and will have to be included in a Permit Scheme application for approval by the DfT.

10. Although we will have to increase resources to operate the permit scheme during the first year of operations, monies received from the utility companies will be in the order of £2 million per annum. However as some 40% of modifiable works will be our own highway works the non-refundable cost of permitting these will be in the order of £850,000 per annum. This figure will comprise initial staff cost, training and software outlay most of which may be recovered during the first year of operation. However, it is stressed that these figures can only be estimated at the current time, as regulations will dictate new requirements and procedures, which is not possible to place budget figures upon until they are released.

11. A percentage of this estimated cost is the expenditure to 'set up' the scheme with reference to staff resource, software and other set up fees and therefore will not be recovered until the process is fully established. The DfT has indicated that they will give authorities a six-month period to establish the permit process in order that staff may be recruited and trained. This will follow a short lead in period which will allow the software companies time to develop and install the necessary software requirements.

12. It is estimated that in order to run a permit scheme in Kent, a further 30+ members of staff of varying disciplines will be required spread throughout the KHS offices.
13. It must be stressed that the above is only an estimate and that we will be able to justify to the DfT that our permit fees should be charged at the maximum allowable and that all works on all types of roads will require a permit.
14. However, we do have the option to improve the control over works on the highway by developing a more disciplined approach to works informed by EToN noticing system.
15. **Part 4 - Fixed Penalty Notices (FPN's)**  
The introduction of FPN's will bring about a system of financial penalties, which can be issued to roadworks and streetworks promoters for failures in their systems that prevent full co-ordination of works on the highway. The process will also be applied to local authority roadworks, although these penalties will be recorded against performance indicators and will not be a financial restraint. The resulting performance records are expected to be transparent, showing complete parity and made fully available to the general public and utilities alike.
16. The DfT has completed their consultations for the FPN scheme and has indicated that the regulations are expected to come into force during mid - late 2007.
17. Currently, the roadworks co-ordination units process approximately 50,000 works notices per annum. Due to limitations of existing staff resources, it is impossible for the existing teams to monitor every notice leading to an inefficient service that does not fully embrace the possible income stream. The TMA requires that local authorities commence the noticing of their own roadworks as soon as possible and therefore the amount of works notices processed by KCC will increase by approximately 40% to over 70,000 works notices per annum. It is estimated that KHS will require 12 full time roadworks co-ordinators (1 per district area) to manage, scrutinise and co-ordinate these notices in order that the necessary Fixed Penalties may be applied and that the scheme operates to its full potential for the issue and collection of these fines.
18. A conservative estimate shows that approximately 5% of notices issued may attract a FPN and that if the scheme is managed precisely, with the correct number of staff resources in place a possible annual income can be calculated at around £640,000. Allowances should be made for the fact that following the initial peak in the issue of penalties, these may decrease, as the promoters become more aware of their duties.
19. It may be possible to improve the processing of notices by investing in technology such as hand held equipment for the Highway Inspectors. The use of this equipment will ensure that the service is run economically and efficiently.
20. The DfT has indicated that guidelines in relation to what will constitute a FPN offence will not be issued and have indicated that legal procedures through Magistrates Courts will decide offences. Therefore, KCC may become involved in test cases, within this procedure. It is hoped that close liaison with other organisations such as Kent Highway Authority & Utilities Committee (KHAUC) and SouthEast Highway Authority & Utilities Committee (SEHAUC) will reduce the use of the legal progress.
21. **Part 5 - Traffic Management in London**  
KCC does not participate in Part 5 of the Traffic Management Act
22. **Part 6 - Civil Enforcement of Traffic Contravention's**  
The DfT closed the consultation period for this part of the TMA in September 2006 and it is expected that the regulations will come into force Mid 2007.

23. The proposed changes are allied with the Civil Bus lane and moving traffic enforcement which propose to hand responsibility for some moving offences to the Parking Attendants who will become Civil Enforcement Officers.
24. The decriminalisation agreement that currently operates within Kent gives the powers of enforcement and control of the on street parking to the individual District/Borough Authorities. The duties performed by the District/Borough Authorities and their officers will form part of the measurement and reporting procedures required under the TMA. Therefore it is essential that close liaison and communication links are fully maintained with the local authorities and that stringent monitoring procedures are put into place to ensure that the KCC does not get penalised by the DfT for any inefficiencies in performance by the District/Borough Councils.
25. The proposed changes to the current system currently operated within the District/Borough Councils in Kent under a decriminalisation agreement are summarised as follows:
- Authorities may be required to publish 'parking maps' for the general public, along with financial and statistical data.
  - Authorities may be required to regularly review their parking policies in consultation with stakeholders and publish this information for the general public.
  - Authorities may be required to introduce differential penalty charges dependent upon the location of the vehicle therefore issuing a more severe penalty for vehicles parked in areas where parking is permanently banned.
  - Civil Enforcement Officers may be given the discretion to decide when to issue a Penalty Charge Notice (PCN).
  - PCN's may be issued by post - specifically those issued for moving offences, which may be captured by automated methods such as cameras.

26. **Part 7 - Miscellaneous Duties**

Part 7 of the TMA is currently under discussion through various working parties and dates for the Regulations to come into force are yet to be released.

**Revised Timetable for Implementation of the Traffic Management Act 2004 Regulations.**

27. The table below shows the timescale for implementation of the Traffic Management Act regulations.

<b>Wave 1</b>			
	<b>Estimated date for full public consultation</b>	<b>Estimated date of laying regulations /making</b>	<b>Estimated date of regulations coming into force</b>
<b>Guidance on Intervention Criteria</b>	July - September 2006	Late 2006	Early 2007
<b>Notices, Directions and Restrictions</b>		Early 2007	Mid-late 2007
<b>Fixed Penalty Notices</b>		Early 2007	Mid-late 2007
<b>Section 74 Over Staying Charges</b>		Early 2007	Mid-late 2007
<b>Permits</b>	October - December 2006	Mid 2007	Late 2007
<b>Civil Parking Enforcement</b>	July - September 2006	From Early 2007	Mid 2007
<b>Civil Bus lane and moving traffic enforcement</b>	Early-mid 2007	From Late 2007	Early 2008
<b>Inspection of Blue Badges</b>		Mid 2006	Mid-late 2006

<b>Wave 2</b>	
	<b>Working Group commences</b>
<b>Inspections</b>	Ongoing HAUC(UK) Working Group
<b>Training and Accreditation</b>	Ongoing HAUC(UK) Working Group
<b>Diversionsary Works</b>	Ongoing HAUC(UK) Working Group
<b>Records</b>	<i>Late 2007 (TBC)</i>
<b>Highways Act FPNs and Overstaying Charges</b>	<i>Late 2007(TBC)</i>

<b>Wave 3</b>	
	<b>Working Group commences</b>
<b>Resurfacing</b>	TBA
<b>Safety Code</b>	TBA
<b>Qualifications</b>	TBA
<b>Reinstatement Specification</b>	Ongoing HAUC(UK) Working Group