Dear Sir

Please find set out below the response from JAG(UK) in relation to the recent consultation regarding the TMA.

Kind Regards

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Question 1: Do you agree with the proposed adjustments to the revenues associated with TMA for the three GDNs, North London, Southern and Scotland?

No.

JAG(UK) strongly disagrees with the proposals. The reward for poor works management and control is to pass all the responsibility and cost onto the tax payer, this seems to totally undermine the whole premise of criminal, contractual and civil law. The Utility sector already benefits from “free “access to the highway network, this places great strain on the highway asset and public purse. Recent studies have proven the detrimental affect their works have on the design life of the highway asset even if the work undertaken complies with the relevant national specification. Unfortunately, test results reveal that one in two works do not comply with that specification adding to the further deterioration of the highway asset. JAG(UK) is concerned that, to then try pass on these costs, which are avoidable if works are both planned and executed correctly, seems incredulous - the customer ends up paying three times: the cost due to disruption due to street works; in Council Tax to pay for premature maintenance of the highway asset; and the cost to the utility company for his inefficiencies..

<u>Permit Fees</u>

Permit schemes are viewed by local authorities as a means of delivering the additional duties placed upon it by the Traffic Management Act 2004 (TMA). As a reminder, the main drive behind the Act is to improve the management of the highway network and reduce network occupancy by those undertaking works on it. The Government estimates the cost to the UK of works in terms of disruption to be in the order of £5 billion. This should also be taken into the context of additional pressure on the public purse for Highway Authorities to comply in terms of the main aim of the Act which is to manage their road network to secure the expeditious movement of traffic on their network and to facilitate the same on the network of others'. Other pressures on local authorities are set out below:

Road traffic has increased enormously (84% increase between 1980 and 2006);

More than 33 million vehicles registered in the UK - more two car households than no-car households;

Growth projections suggest additional congestion costs of £22 billion every year in England by 2025;

85 per cent of people believe that congestion is a serious or very serious problem for the country;

Safety has improved (on target to meet 40% target by 2010); and

Climate change concerns (exacerbated by driving styles, road design) increasingly prominent in peoples' minds.

Permits provide local authorities with certainty regarding the effect work will have on the highway network in terms of occupancy and disruption; the alternative notice system is only an intention to work. A typical cost benefit analysis is set out below and shows the major societal benefits which accrue as a result of a permit scheme. It should also be noted that Permit Fee income is not significant enough to affect the results due to fees making up just 7% of overall benefits.

Bedford Borough Council   Cost Benefit Analysis (D3)

Sensitivity Factors

Risk & Optimism Bias Factor	0.38
Discount Factor	0.035
Years to Discount	9
% Reduction in Roadworks	5

Benefits

Quantified Annual Repeat Benefits (2002 Prices)	Projected Annual Benefit	Adjusted Annual Benefit
Consumer User Benefits	£1,332,408	£1,332,408
Business User Benefits	£1,197,489	£1,197,489
Accident Benefits	£285,157	£285,157
Fuel Carbon Emission Benefits	£21,786	£21,786
Indirect Tax Revenue Benefits	-£62,001	-£62,001
Subtotal Quantified Annual Repeat Benefits (2002 Prices)		£2,774,839

Annual Repeat Permit Fee Income (2011 Prices)	£270,599
Annual Repeat Permit Fee Income (2002 Prices)	£198,547

Present Value of Benefits (2002 Prices)	£2,973,386
Net Present Value of Benefits (25 Years Operation)	£74,334,647

Costs

One-off Implementation Costs (2011 Prices)	Total
Employees	£0
Capital	£0
Resources	£68,549
Systems	£13,500
Subtotal One-off Costs (2011 Prices)	£82,049
Subtotal One-off Costs including Risk & Optimism Bias (2011 Prices)	£113,228

Present Value of One-off Costs (2002 Prices)	£83,079

Annual Repeat Costs (2011 Prices)	Annual Cost
Operating Costs (Statutory Undertaker Works)	£333,164
Operating Costs (Highways Works)	£242,125
Subtotal Annual Repeat Costs (2011 Prices)	£575,289
Subtotal Annual Repeat Costs including NO Risk & Optimism Bias (2011 Prices)	£575,289

Present Value of Annual Repeat Costs (2002 Prices)	£422,107
Net Present Value of Costs (Implementation + 25 Years Operation)	£10,635,763

Summary

Net Present Value of Benefits (Implementation + 25 Years Operation)	£74,334,647
Net Present Value of Costs (Implementation + 25 Years Operation)	£10,635,763
Net Present Value of Permit Scheme (Implementation + 25 Years Operation)	£63,698,884
Benefit to Cost Ratio (BCR)	6.99

Fixed Penalties:

The main reason for fixed penalties is as a direct result of a lack of investment from utility companies in systems to manage their works on the highway. The fundamental principle behind the whole legislative framework of the TMA is the coordination of all activities on the highway. The requirement for timely and accuracy of data was borne out of the singular failure by utility companies to provide even the most basic of information, where they were working, when they intended to start, when they intended to finish and how long they intended to be there. This is, in essence, simple good housekeeping and an area where good systems and works management would remove the risk of failing to provide correct information. The lack of accurate and timely has driven the push for this failure to carry a penalty: it is improper for the consumer to be penalised.

Fixed penalties were also introduced as a method of discharging certain (criminal) offences without the need for the courts to intervene. JAG(UK) believes that committing criminal offences by utilities should not be seen to be condoned by the Regulator and if these penalties are passed on to the consumer then local authorities would see no alternative but to go back to the prosecution process: a retrograde step.

S74 Overstay charges

Overstay charges, as with fixed penalties, are an avoidable cost. The issue again is a lack of investment in processes and systems to help improve efficient working, an aim JAG(UK) would hope the Regulator would be keen to promote. Again, by passing the charges to the customer, is seen as the reward for lack of investment and inefficient working. The disruption caused by works has been clearly established and utility companies have had ample opportunity to invest in smarter working practices, however, some appear to flout the regulations pay the overstay charge. S74 Overstay charges were introduced to drive efficient planning and for the utility to undertake the works expeditiously, ultimately to reduce the time that the road user is disrupted. Overstay charges are to discourage excessive durations of road occupancy by the utilities and are totally avoidable.

The snapshot provided by Transport for London (TfL) below is a good indication of how the whole country views and operates S74. TfL figures show that very few works undertaken by both NGG and SGN incur an overstay charge with only 4.95% of NGG works incurring a charge and 2.97% of SGN works incurring a charge.

S74	No of S74 works	
NGG	25	4.95%
SGN	16	2.97%

The Regulations clearly state that all charges imposed on works promoters must be reasonable. Indeed the relevant regulations are entitled “The Street Works (Charges for Unreasonably prolonged Occupation of the Highway)”. Under these Regulations, works promoters can apply for variations to extend the duration of their works if they have reasonable grounds for doing so. Highway authorities cannot refuse reasonable requests and so there is no reason why overstay charges should e incurred. Indeed, the figures collated by TfL in their table above show that, even once a charge has been incurred, by providing suitable representation, such charges can be, and often are, waived as can be seen from the table below:

S74 Charges invoiced/waived			
Incurred	Waived	Invoiced	% waived
£136,000.00	£21,000.00	£115,000.00	15%
£44,500.00	£16,400.00	£29,100.00	37%

It should be noted that, for fixed penalties and overstay charges, a number of utilities are known to pass on these costs to their contractors through their contracts. It would be totally unethical for utilities to recover these costs from both their contractor and their customers.

Question 2: Do you agree with the proposed principles that have been set and that these should be applied to future TMA re-openers and price controls?

No

The regulator needs to take more account of utility performance in the delivery of services to the public. For instance it is clear that 1 in 2 of their works fail to comply with the reinstatement specification and this is placing real strain on the highway asset and the public purse. JAG(UK)I would hope that the regulator is keen on ensuring that not only the industry delivers efficient services but also comply with relevant legislation. The reinstatement of the highway affects the whole country and yet utility poor performance does not feature in the Regulator’s assessment of delivery. A serious look needs to be taken as to how these companies perform with reward for compliance and penalty for non-compliance.

JAG(UK)’s strong assertion that any fines imposed by other regulatory bodies such as Highway Authorities should be treated no less lightly and, if these were to be passed onto consumers, there can be no incentive for behaviour to change.

Question 3: Do you agree with the timeframe within which it is proposed that additional revenues will be recovered?

Taking on board JAG(UK)'s views above, the timeframe is irrelevant as JAG(UK) strongly opposes the view that certain costs should be passed on to the consumer. JAG(UK) contends that no reward should be considered where performance is poor. JAG(UK) would clearly like to see some open dialogue with the Regulators with a view to drive better performance by utility companies and where good performance is seen to be rewarded.