

EXPLANATORY MEMORANDUM

HIGHWAYS, WALES

THE TRAFFIC MANAGEMENT (GUIDANCE ON INTERVENTION CRITERIA) (WALES) ORDER 2007

This Explanatory Memorandum has been prepared by the Economy and Transport Department of the Welsh Assembly Government and is laid before the National Assembly for Wales in accordance with SO 24.1.

Description

1. Appended in the Schedule to this Order is guidance about the criteria which Welsh Ministers will apply for the purpose of deciding whether to give an intervention notice, or make an intervention order, under Part 2 of the Traffic Management Act 2004 (“the Act”).

2. This guidance, entitled Guidance on Intervention Criteria for Wales, is part of the process of enforcing the network management duties imposed on local traffic authorities by sections 16 and 17 of the Act. If Welsh Ministers consider that a local traffic authority may be failing properly to perform any of those duties, they may give the authority an intervention notice. If they are satisfied that a local traffic authority are failing properly to perform any of those duties, they may make an intervention order making provision for, or in connection with, the appointment of a traffic director for the purpose of securing that the duties in question are properly performed.

Matters of special interest to the Subordinate Legislation Committee

3. The Order uses a somewhat unusual power in that the guidance is required to be appended to a statutory instrument as a means of laying it before the National Assembly for Wales.

Legislative background

4. The power that enabled this Order to be made is contained in section 27 of the Traffic Management Act 2004. This power has been transferred to Welsh Ministers and the Order was made using the negative resolution procedure.

5. The Order has been made under the powers conferred by section 27 of the Act. This is the first use of the power.

6. Part 2 of the Act imposes network management duties on all local traffic authorities. These duties are contained in sections 16 and 17 and came into force in Wales on the 26 October 2006. Sections 20 to 30 cover the enforcement of these duties.

7. Under section 16 (the network management duty), the overriding duty of a local traffic authority is to manage its road network with a view to achieving two objectives, so far as may be reasonably practicable having regard for its other obligations, policies and objectives. These two objectives are-

- (a) to secure the expeditious movement of traffic on that network; and
- (b) to facilitate the expeditious movement of traffic on road networks for which another authority is the traffic authority.

8. Section 17 (arrangements for network management) sets out a number of additional duties for an authority including, in particular, the need to make provision for the appointment of a traffic manager to perform such tasks as it considers will assist the authority to perform its main duty under section 16. These are single duties for the purposes of enforcement but nevertheless underpin the main duty.

9. Guidance on Intervention Criteria is required as part of the process of ensuring that local traffic authorities properly perform their various network management duties.

10. Section 27 imposes two requirements. Welsh Ministers must not only give guidance about the criteria which it is proposed should apply for the purpose of deciding whether to give an intervention notice or make an intervention order, but also append the guidance to an order made by statutory instrument subject to negative resolution procedure.

Purpose and intended effect of the legislation.

11. The intended effect of this Instrument is to provide guidance as to how Welsh Ministers will take action if it is believed that an authority may be, or is, failing to properly perform any of its network management duties, using the powers provided by the Act. The Guidance demonstrates how Welsh Ministers will assess the performance of an authority and assist them, where appropriate, through a process of engagement and enforcement, to avoid a failure to properly manage the road network.

Policy background

12. Section 20 of the Act enables Welsh Ministers to give an intervention notice to a local traffic authority if it is considered that the authority may be failing properly to perform any of their duties under sections 16 and 17.

13. If Welsh Ministers are satisfied that an authority is failing properly to perform any duty under those sections, provision may be made, by way of an intervention order for, or in connection with, the appointment of a traffic director in relation to that authority. The traffic director will be given such objectives as Welsh Ministers consider will ensure that the duty in question is properly performed.

14. Section 27 obliges Welsh Ministers to give guidance about the criteria that will be applied for the purpose of deciding whether to give an intervention notice or make an intervention order. In accordance with subsection (2), this guidance is appended in the Schedule to the Order.

15. The purpose of sections 20 to 30 is to ensure that local traffic authorities are properly performing their network management duties. If Welsh Ministers are satisfied that an authority is failing in any of its duties, intervention will be initiated in accordance with these sections. It is expected that the potential for intervention will encourage authorities to ensure that they carry out their network management duties properly.

16. The intervention process would be difficult to put into effect without this guidance being given. Accordingly, the Order is necessary to enable Welsh Ministers to take enforcement action.

17. The Guidance also establishes the preliminary use of section 19 powers within the context of enforcement. Under this section, Welsh Ministers may direct an authority to provide information relating to any aspect of the performance of their network management duties. An authority could take advantage of this by working with the Welsh Assembly Government to raise its standards. This would provide an opportunity for remedying any potential issues without the need for further formal intervention.

18. The Guidance sets out examples of questions that Welsh Ministers may ask to determine an authority's level of performance, when assessing the evidence available. These give authorities a clear understanding of the general questions that they should be asking themselves in determining whether they are performing their network management duties properly.

19. The Act itself, which is seen as a spur for the better management of the road network, provides a built-in opportunity for engagement and recovery, by enabling a local traffic authority to work together with the Assembly Government at an early stage with the aim of making improvements. Making an intervention order to appoint a traffic director will be a situation reached only after serious efforts have been made to raise the standard of an authority that may not be properly managing its network.

20. The Guidance highlights common features of the *Network Management Duty Guidance* (published by the Assembly Government in November 2006), for all of which a local traffic authority must have regard. It also re-states the network management duties (see Annex 1) and discusses ways in which an authority may present evidence of performance when reporting to Welsh Ministers.

21. The Guidance shows when and how Welsh Ministers would reach decision points in relation to enforcement. This enables local traffic authorities to see if they are at risk of intervention and to take action accordingly. It will also act as a reference that authorities can use over time to improve their performance in managing their road network.

Sectors and groups affected

22. The majority of people use the road network to some degree, so efficient management of that network should assist in tackling congestion and reducing disruption to all. The issue to be addressed is how to assess the performance of an authority and assist them, through a process of engagement and, if necessary, enforcement, to avoid a failure to properly manage the road network.

23. The Regulatory Impact Assessment below does not assess the impact of the duties under sections 16 and 17; it addresses the impact of the *Guidance on Intervention Criteria*.

24. In putting their network management duties into practice, each authority is assisted by its traffic manager and other personnel used to implement those duties. Accordingly, local traffic authorities and their traffic managers are directly affected by the application of the *Guidance on Intervention Criteria* in relation to enforcement of the duties.

25. There are no groups that will be disproportionately affected by any of the options below. Authorities are already under a statutory obligation to perform sections 16 and 17 duties and Regional Transport Plan (RTP)* teams are already required to report on the duties.

*A Regional Transport Plan (RTP) is prepared by two or more Transport Authorities working together. The Regional Transport Planning (Wales) Order 2006, modifies section 108–111 of the Transport Act 2000. Specifically, it allows the Welsh Ministers to permit local transport plans (LTPs) to be made on a regional basis rather than individual authority basis.

The extent of the issue and what would happen if no action was taken

26. A local traffic authority's efficient management of its road network is of vital importance to economic vitality and society in general. A large proportion of the population uses the road network daily. It is becoming increasingly difficult to ease the problem of increased car usage by building new roads; hence the need to manage the current road network as well as possible. Therefore the size of the issue is nationwide and affects almost everyone.

27. All authorities in Wales are aware of their new network management duties and may have appointed a Traffic Manager. Some may have already decided to re-structure responsibilities in their organisation. The majority of authorities appear to be planning to take a number of actions with their new responsibilities in mind.

28. By doing nothing, an authority may fail to manage its network properly. However, the chances of this happening may well be reduced by the prospect of intervention powers being used against them. These powers and the methods of applying them are designed principally to encourage an improvement in standards; a process which should initially deter failure but also provide a remedy should it occur.

Implementation

29. The Order was made on 13 June 2007 and the coming-into-force date is 10 July 2007.

30. Similar subordinate legislation was made in England on 7 February 2007 and came into force on 12 March 2007.

Consultation

31. A consultation was undertaken and details follow below.

Regulatory impact assessment

32. A regulatory impact assessment has been carried out in relation to this Instrument and follows below.

Compliance

33. The legislation has been drafted to (as far as is applicable):

- have due regard to the principle of equality of opportunity for all people (Government of Wales Act 2006 section 77);
- be compatible with Community law (section 80);
- be compatible with the obligations regarding human rights placed upon the Welsh Ministers by section 81 of the Government of Wales Act 2006; and
- be compatible with any international obligations binding the UK Government and Welsh Ministers (section 82).

34. The information in this Memorandum has been cleared with the Legal Services Department.

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Regulatory Impact Assessment

Options

Option 1: Do Nothing

1. Section 27 of the Act places a duty upon Welsh Ministers to produce intervention guidance. In the absence of such guidance, the purported issue of a valid intervention notice or the making of a valid intervention order would be procedurally flawed and subject to challenge.

Option Two – Publish the Guidance

2. Local traffic authorities expect Welsh Ministers to meet their statutory obligation and publish Guidance. All authorities will understand that if they fail properly to perform any of their network management duties, they will run the ultimate risk of a traffic director being appointed to ensure that those duties are properly performed. This should encourage them to take a positive approach to the management of their road network thus avoiding the need for enforcement action.

3. This option supports the statutory duties with the potential for central government intervention for failure to properly perform them. Public Sector employees in the majority of authorities are not required to perform any new or different duties. For example, teams that write the LTP/RTP within a local authority are already obliged to report on the network management duties. Publication of the Guidance acts as a reminder to all public sector employees in authorities that they should direct their attention to the network management duties. Its value will be to encourage authorities to improve their approach to managing the road network particularly in the few cases where there may be cause for concern.

Relationship with work being carried out elsewhere in this area—

4. LTP/RTPs are to be submitted to the Assembly Government in 2008. These reports will be expected to give an initial indication of how authorities are carrying out their duties.

5. The Assembly Government will support the performance of the duties in Wales by liaising with all authorities

6. This guidance is necessarily aimed at a local traffic authority which may be failing in its specific duties under the Act. However, its focus is on encouraging all authorities to raise their standards for managing the road network, short of statutory intervention, wherever possible.

Benefits

7. The Guidance on Intervention Criteria will assist local traffic authorities in the performance of their duties. It clarifies exactly what those duties are, illustrates how Welsh Ministers expect them to be performed and draws attention to the appropriate features of the Network Management Duty Guidance that should be employed in managing their network. As the techniques of network management are continually developing, any guidance on how to perform these duties better will be of assistance to local traffic authorities and of substantial benefit to the travelling public.

8. Welsh Ministers are obliged to publish the Guidance on Intervention Criteria by appending it to a statutory instrument. This guidance is an integral part of enforcement of the network management duties and will combine with both the Act and the Network Management Duty Guidance to form a framework within which authorities will carry out their duties. Ensuring that these duties are performed properly will have a positive impact

on network management by contributing to the avoidance of congestion and disruption and encouraging the more efficient use of the network.

Costs

9. It is common for secondary legislation to set out new responsibilities and for the associated Regulatory Impact Assessment to examine the costs and benefits involved. However, this particular Order is being used in a slightly unusual way as the required means of drawing particular attention to the Guidance. The Guidance is nevertheless a constituent part of the overall approach taken in the Act. The Regulatory Impact Assessment associated with the latter considered the costs and benefits and concluded that “overall, the potential benefits of even relatively small improvements in the performance of congested networks, means that the benefits (measured in traditional cost benefit terms) are likely to more than outweigh the costs”.

10. Furthermore the same Regulatory Impact Assessment states that “the Bill’s provisions overall should be cost neutral for local authorities”. Network management duties came into effect on the 26 October 2006 and local traffic authorities should have been carrying out these responsibilities since then. These statutory duties are also overall cost neutral. Implementation of the Guidance will not lead to any additional administrative burdens for authorities as reporting on how authorities carry out the duties will be based on existing reporting processes i.e. the LTP/RTP process for local authorities.

11. The Act itself provides a built-in opportunity for engagement and recovery. The Guidance reflects this in setting out the approach to be taken both in assessing the performance of an authority and assisting them to avoid failure. Nevertheless, the Guidance necessarily describes issues associated with intervention and there is consequently interest in the subsequent impacts such as those relating to the appointment of a traffic director. These associated issues and the potential cost impact of appointing a traffic director are not major considerations in determining the balance of costs and benefits of publishing the Guidance. In any event these will only affect the small number of authorities who fail to perform their duties properly.

12. The Table below provides an estimate of the cost of appointing a traffic director to a failing local traffic authority. These costs are, of course, avoidable. The level of cost is dependent on the level of intervention required and this would be proportionate to the actions needed. Under the Act the degree of intervention varies from monitoring any matter to carrying out the functions of the local traffic authority; the latter being the most serious form of intervention.

13. A traffic director appointed by Welsh Ministers may be any person or persons including public authorities. The range of costs shown is based on estimates to address one of the duties for a year in a local traffic authority (LTA) to which -

- a traffic director is appointed with support staff (Column 1), and
- a traffic director alone is appointed (Column 2).

Indicative Costs of Intervention		
	Column 1	Column 2
General powers conferred on the traffic director under section 21(5) of the Act	Estimated cost of appointing a traffic director and supporting staff to a single LTA	Estimated cost of appointing a traffic director alone to a single LTA
Monitoring any matter	£38,000 - £77,000	£12,000 - £24,000
Reporting on any matter	£50,000 - £100,000	£18,000 - £36,000
Intervening in activities of the LTA	£88,000 - £176,000	£22,000 - £44,000
Carrying out a function of the LTA	£122,000 - £245,000	£40,000 - £80,000

14. The estimates in Columns 1 & 2 span a range from action in a relatively narrow function of the authority to a more strategic action across the authority. The costs are based on broad estimates of staff numbers, grades and days of work anticipated to match the powers that might be conferred on a traffic director.

15. The costs in the Table above give an indication of the cost that may result for an authority as a consequence of the Guidance being used to make decisions on intervention. These figures are indicative only and do not constitute costs fixed by the Assembly Government for a particular activity to be carried out by a traffic director in practice. Authorities that perform their network management duties properly will not require intervention. The Assembly Government believes that overall there will be no new costs associated with the implementation of the *Guidance on Intervention Criteria*.

Competition Assessment

16. There are no competition issues.

Consultation

With Stakeholders

17. The Department for Transport held a 12 week public consultation between 6 July 2006 and 27 September 2006. A similar consultation was held with all local authorities and utility companies that operate in Wales between 7 August 2006 and 27 September 2006. A list of the consultees in Wales is attached at Annex 2. Eleven responses were received from consultees in Wales and a list of those who responded is attached at Annex 3.

18. Detailed consideration of the responses led to changes to the Order/Guidance as follows:

- 75% of respondents believed that the criteria were correct. The main concern of the remainder was that there was an insufficiently strong reference to the local authority's requirement to work towards their own individual existing policies and priorities. Accordingly paragraph 13 of the *Guidance on Intervention Criteria* has been amended to place greater emphasis on this.

- The draft *Guidance* generally assumed that local authorities would conduct their network management duties individually and paragraph 42 read:

"There may be cases where authorities exercise jointly a function which is relevant to performing their network management duties. In relation to such cases, the Welsh Ministers may choose to make provision for the enforcement of these duties by order made by statutory instrument which may apply sections 20 to 25 of the Act with or without modifications."

33% of respondents gave examples of where the local traffic authority may exercise duties jointly. These were mainly suggestions involving Traffic Manager Forums, (at regional and national level) and general working party meetings. The Welsh Ministers have noted that there are some small scale joint working arrangements in place around Wales. However, generally, the responses received indicated that there was insufficient evidence to suggest that currently local authorities are performing and exercising functions jointly.

With this in mind, the Welsh Ministers have decided to remove paragraph 42 from the *Guidance*. However, this action does not remove the possibility that local traffic authorities could jointly exercise their duties in the future.

- A change in text has taken place in Paragraph 14 as responses from the consultation (particularly from local authorities) indicated that they did not believe that the *Guidance* reflected other modes of traffic to a significant degree.
- Paragraphs 32(8) and 37(5) of the *Guidance* have both been amended to include and acknowledge the role of statutory undertakers and public transport operators in network management.
- There have also been a small number of minor amendments to the *Guidance*. An example of this is in Paragraph 43 where the word "mitigating" has been replaced by the word "individual". The change is to clarify the wording and make it more reader-friendly. It should also reduce the possibility of the reader misinterpreting the document.

19. A full Report on the joint consultation and subsequent decisions, also agreed by the Assembly Government, is attached at Annex 4.

With Subject Committees

20. The draft Order was first notified to the Enterprise, Innovation and Networks Committee via the list of forthcoming legislation on 20 September 2006 (EIN(2) 06-06 (p.4)) but was not identified for detailed scrutiny.

21. The draft Order was notified to the Local Government and Public Services Committee via the list of forthcoming legislation on 18 January 2007 LGPS(2) 01-07(p.2) but was not identified for detailed scrutiny.

Post implementation review

22. Welsh Ministers will assess regular reports (LTP/RTPs) from authorities to determine how each has performed their network management duties. That assessment will draw initial conclusions on the overall performance of authorities and any trends that may emerge between assessments.

23. In conjunction with the Department for Transport, the effectiveness of the network management duties within the wider context of the Act will be evaluated through a research programme. This will focus on policy evaluation; taking a more strategic view than just routine monitoring of regular reporting and assessment. The programme will include an independent review of the causes of congestion and disruption. It will give a better understanding of the causes of congestion relating to the Act and where improvements might be made to new and existing regimes.

24. Feedback on the use and impacts of the *Guidance on Intervention Criteria* will come from both the monitoring and evaluation exercises described above

Summary and recommendation

25. Having considered the issues set out above, Welsh Ministers concluded that it was necessary to publish the *Guidance on Intervention Criteria* under section 27 of the Act, in order to place a strong emphasis on the need for authorities to manage their network in a holistic way. The Guidance demonstrates how Welsh Ministers will assess the performance of an authority and assist them, where appropriate, through a process of engagement and enforcement, to avoid a failure to properly manage the road network. Welsh Ministers believe that the benefits of improved network management resulting from implementation of the Guidance, including the clear steps set out for intervention, will more than outweigh any additional costs incurred by the small number of authorities who might be subject to these measures.

Network Management Duties
<p>(1) Under section 16 (the network management duty), the main duty of an authority is to manage their road network with a view to achieving two objectives, so far as may be reasonably practicable having regard for their other obligations, policies and objectives. These two objectives are—</p> <ul style="list-style-type: none"> (a) to secure the expeditious movement of traffic on that network; and (b) to facilitate the expeditious movement of traffic on road networks for which another authority is the traffic authority.
<p>(2) Section 17 (arrangements for network management) sets out a number of additional duties for an authority which are single duties for the purposes of sections 20 and 21 but which nevertheless underpin the main duty under section 16. These are more particularly set out as follows.</p>
<p>(3) An authority has a duty to make such arrangements as it considers appropriate for—</p> <ul style="list-style-type: none"> (a) planning the action to be taken in performing the network management duty; and (b) carrying out that action.
<p>(4) An authority has a duty to ensure that these arrangements include provision for the appointment of a traffic manager.</p>
<p>(5) An authority has a duty to ensure that the arrangements also include provision for establishing processes for ensuring (so far as may be reasonably practicable) that it—</p> <ul style="list-style-type: none"> (a) identify things which are causing— <ul style="list-style-type: none"> (i) road congestion on their road network; or (ii) other disruption to the movement of traffic on that network; (b) identify things (including future occurrences) which have the potential to cause— <ul style="list-style-type: none"> (i) road congestion on their road network; or (ii) other disruption to the movement of traffic on that network; and (c) consider any possible action that could be taken— <ul style="list-style-type: none"> (i) in response to; or (ii) in anticipation of; anything so identified; <p>but this does not require the identification or consideration of anything appearing to have only an insignificant effect, (or potential effect), on the movement of traffic on their network.</p>

Network Management Duties

(6) An authority has a duty to ensure that the arrangements also include provision for ensuring that it—

- (a) determine specific policies or objectives in relation to—
 - (i) different roads in their road network, or
 - (ii) different classes of road in that network;
- (b) monitor the effectiveness of—
 - (i) its organisation,
 - (ii) its decision making processes, and
 - (iii) the implementation of its decisions; and
- (c) assess its performance in managing their network.

(7) An authority has a duty to keep under review the effectiveness of the arrangements it has in place under section 17 of the Act.

**THE TRAFFIC MANAGEMENT (GUIDANCE ON INTERVENTION CRITERIA) (WALES)
ORDER 2007
Consultation List**

Associated British Ports
Association for Road Traffic Safety and Management (ARTSM)
Association of Chief Police Officers
Association of Consulting Engineers
Automobile Association
Brecon Beacons National Park Authority
BT
Campaign for the Protection of Rural Wales (CPRW)
Chartered Institute of Logistics and Transport
Chief Executive Officers of County Councils in Wales
Chief Technical Officers of County Councils in Wales
Confederation of British Industry (Wales)
Confederation of Passenger Transport UK
Countryside Council for Wales
Dwr Cymru Welsh Water
Electrical Contractors Association
Environment Agency
Forestry Commission
Freight Transport Association
Friends of the Earth Cymru
Highway Authorities and Utilities Committee (UK)
House Builders Federation
Institute of Highways Incorporated Engineers
Institute of Logistics and Transport
Institute of Road Safety Officers
Institution of Civil Engineers (ICE)
Institution of Electrical Engineers
Institution of Gas Engineers & Managers
Institution of Highways and Transportation
Institution of Lighting Engineers
Institution of Water & Environmental Management
Mid and West Wales Fire Brigade
Mid Wales Partnership
Mid Wales Trunk Road Agency
National Grid
National Power Plc
National Sewerage Association
Networkrail
North Wales Fire Service
North Wales Trunk Road Agency
NRSWA WALES
NTL
Office of Communications
Office of Gas and Electricity Marketing (OFGEM)
Office of Water Services
Pembrokeshire Coast National Park Authority

Powergen
Ramblers Association
Severn Trent Water
Snowdonia National Park Authority
South Wales Fire Service
South Wales Trunk Road Agency
SUSTRANS Cymru
Transport 2000
Utilities Contractor Associations' Federation
Wales & West Utilities Ltd
Wales TUC Cymru
Welsh Association of Technical Officers
Welsh Local Government Association
Western Power

**THE TRAFFIC MANAGEMENT (GUIDANCE ON INTERVENTION CRITERIA) (WALES)
ORDER 2007**

Responses to the consultation were received from the following

Highway Authorities

Isle of Anglesea CC

Conwy CC

Newport CC

Gwynedd CC

Flintshire CC

Cardiff CC

Powys CC

Utilities

National Joint Utilities Group

Welsh Water

Others

South Wales Fire Service

North Wales fire Service

**Keeping Traffic Moving:
Consultation on Guidance on Intervention Criteria**

Report on Public Consultation

May 2007

Contents

A: Introduction

B: Background

C: Breakdown of respondents

D: Method

E: Analysis Table of Results

F: Consultation Question Analysis

G: Other Issues Arising from Consultation Responses

H: Further Information

I: List of stakeholders

Keeping Traffic Moving: Consultation on Guidance on Intervention Criteria

A: Introduction

1. A 12 week public consultation on the draft *Guidance on Intervention Criteria* and associated *Initial Public Sector Regulatory Impact Assessment* took place in England on 6th July 2006 and closed on 27th September 2006. A similar consultation was held in Wales between 7th August and 27th September 2006. This document sets out the results and analysis of these consultations and has been adapted for presentation to the Welsh Ministers.
2. Key stakeholders, including utility and other government organisations were notified at the start of the consultation. All local traffic authorities were contacted by an email addressed to their Chief Executive Officer and their Traffic Manager. A list of these stakeholders can be found in Section I.
3. The framework for issues on which the Government particularly required responses was a series of nine questions. The document was placed on the Department for Transport website at:
<http://www.dft.gov.uk/consultations/closed/ktmcdgic/>
4. We wish to thank everyone who responded to the consultation. In total there were 82 responses of which 56 were received directly from English local authorities and London boroughs. Further responses were received from representative groups, utility and private companies and a small number of Welsh authorities.
5. Sections E and F address the questions posed under the consultation, responses and some of the decisions taken.

B: Background

6. The *Traffic Management Act 2004* ("the Act") introduced new network management duties on local authorities to keep traffic flowing efficiently, taking account of their other duties and responsibilities, and to co-operate with other authorities to the same end. These duties came into effect in Wales on the 26 October 2006.
7. Under the Act, the Welsh Ministers can take steps to ensure that local traffic authorities in Wales carry out their network management duties to manage the road network properly.
8. The Guidance is necessarily aimed at a local traffic authority which may be failing in any of its network management duties under the Act. However, the focus of the Guidance is on encouraging authorities to fulfil their network management duties and raise standards for managing the road network, short of statutory intervention, wherever possible.
9. The Network Management Duties may be enforced through a four stage process. These are outlined below.

10. Stage 1: Under section 19 of the Act, if Welsh Ministers consider that they do not have sufficient information to fully address any particular question, they may contact an authority informally and request further information within a specified period. While the informal approach will probably be the main method of obtaining further information, the Act nevertheless enables the Welsh Ministers to formally direct an authority to provide them, within a specified period, with specified information connected with any aspect of the performance of their network management duties. This power may be exercised at any time but is more likely to be used where an authority fail to provide sufficient or satisfactory information, or simply do not respond to an informal request within any period specified.

11. Stage 2: The Act itself, which is seen as a spur for the better management of the road network, provides a built-in opportunity for engagement and recovery, by enabling an authority to work together with the Assembly Government, at an early stage with the aim of making improvements. If network issues need to be addressed, central and local government can work together, in their respective roles, to deliver policies and programmes that are effective in managing or mitigating the impacts of congestion at a local level.

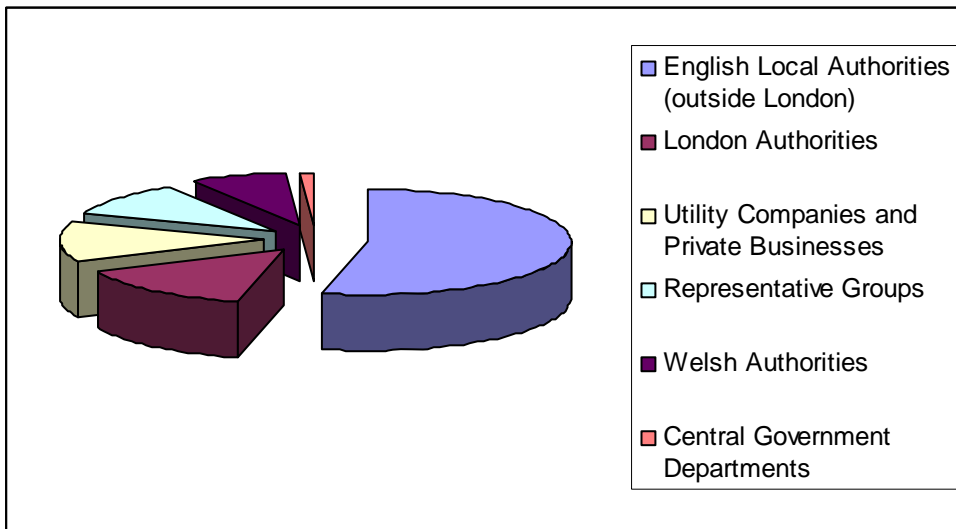
12. Stage 3: The Welsh Ministers will use criteria to assess a local authority's performance against the network management duties before issuing an Intervention Order or an Intervention Notice. The Act enables the Welsh Ministers to give an Intervention Notice to an authority if it is considered that the authority **may be failing** properly to perform any of their network management duties. The Intervention Notice must offer the authority the opportunity to make representations or proposals about any matter raised by the notice.

13. Stage 4: If Welsh Ministers are satisfied the local authority **is failing** in any of its network management duties, then the Act provides for them to appoint a traffic director for that authority. Different levels of intervention are possible, from reporting on concerns about an authority's actions to taking over responsibility for some of the authority's functions. Intervention can be tailored to match the circumstances in each case - and can be reversed.

C: Breakdown of respondents

14. Some 82 replies were received in response to the public consultation. These came from a range of organisations with different backgrounds. The majority of respondents (44) were from English Local Authorities located outside London. 12 responses came from London Traffic Authorities including the London Boroughs and Transport for London. Utility companies and private businesses made 10 responses. Representative Groups, Welsh Authorities and Central Government Departments contributed towards the remaining 16 responses as shown below.

Responses	Number
English Local Authorities (outside London)	44
London Authorities	12
Utility Companies and Private Businesses	10
Representative Groups	9
Welsh Authorities	6
Central Government Departments	1



15. The consultation received in total 56 individual responses directly from English local authorities and London boroughs. However, a further 57 local authority respondents replied indirectly via representative groups or joint responses. Therefore taking into account all methods of replying, the consultation responses represent approximately 75% coverage of all English local authorities and approximately 32% of all Welsh local authorities.

D: Method

16. When undertaking the analysis, responses have been broken down by the following six sectors: London boroughs, Local Authorities outside London, Utility companies and private businesses, Representative groups, Welsh Authorities and Central Government Departments. An average figure has also been produced for each question below.

17. Analysis has been undertaken only on the responses which have directly answered the questions posed. There were additionally 14 respondents who replied to the consultation in only general terms. The views of these respondents could not be related to the consultation questions below.

18. One respondent has requested that their details and responses be kept confidential and not entered onto the Department for Transport's website. This request has been adhered to in undertaking this analysis.

19. The analysis tables in Section E below only refer to questions 1-6. Responses to questions 7-9 are mainly in the form of examples and other comments which respondents felt were relevant, but responses to these questions are explored in further detail in Sections F and G.

E: Analysis Table of Results

Q1: Is the process that is set out in the guidance clear and understandable?

Respondent	Yes	No
London Boroughs	82%	18%
Local Authorities outside London	84%	16%
Utility companies and private businesses	100%	0%
Representative groups	67%	33%
Welsh Authorities	100%	0%
Central Government Departments	N/A	N/A
Average	82%	18%

Q2: Is it helpful for the Guidance to show the steps in the process which will be adopted when considering whether to give an intervention notice or make an intervention order?

Respondent	Yes	No
London Boroughs	89%	11%
Local Authorities outside London	89%	11%
Utility companies and private businesses	75%	25%
Representative groups	100%	0%
Welsh Authorities	80%	20%
Central Government Departments	N/A	N/A
Average	88%	12%

Q3: Do you consider that the Guidance on Intervention Criteria is suitably derived from the Traffic Management Act 2004 and can assist local authorities in improving management of the road network?

Respondent	Yes	No
London Boroughs	88%	12%
Local Authorities outside London	95%	5%
Utility companies and private businesses	100%	0%
Representative groups	100%	0%
Welsh Authorities	80%	20%
Central Government Departments	N/A	N/A
Average	90%	10%

Q4: Do you think that the approach of identifying the types of question in the *Guidance on Intervention Criteria* that each local traffic authority should be asking themselves under the Act is useful?

Respondent	Yes	No
London Boroughs	89%	11%
Local Authorities outside London	100%	0%
Utility companies and private businesses	100%	0%
Representative groups	100%	0%
Welsh Authorities	100%	0%
Central Government Departments	N/A	N/A
Average	99%	1%

Q5: Do you think that the criteria are correct? If not, please state reasons. Will they ensure that local traffic authorities will carry out their network management duties properly?

Respondent	Yes	No
London Boroughs	33%	67%
Local Authorities outside London	86%	14%
Utility companies and private businesses	25%	75%
Representative groups	83%	17%
Welsh Authorities	80%	20%
Central Government Departments	N/A	N/A
Average	75%	25%

Q6: Do you think that the *Guidance on Intervention Criteria* covers all the necessary significant elements from the *Network Management Duty Guidance*? If not, which other elements should be included?

Respondent	Yes	No
London Boroughs	67%	33%
Local Authorities outside London	62%	38%
Utility companies and private businesses	100%	0%
Representative groups	83%	17%
Welsh Authorities	100%	0%
Central Government Departments	N/A	N/A
Average	72%	28%

F: Consultation Question Analysis

Q1: Is the process that is set out in the guidance clear and understandable?

82% of respondents generally believed that the Guidance was clear and understandable. In agreeing most respondents did point out several aspects of the Guidance which they felt could be improved. Whilst it was accepted that it was relatively clear, there were a number of respondents who thought the consultation draft Guidance did not focus on describing the type of evidence that would be seen as acceptable by the Welsh Ministers.

The Welsh Ministers' view is that the Guidance is being published to highlight the criteria that will be used to determine whether intervention is necessary. It is for the local authority, given their local circumstances, to successfully demonstrate they are meeting their network management duties.

Q2: Is it helpful for the Guidance to show the steps in the process which will be adopted when considering whether to give an intervention notice or make an intervention order?

88% of replies indicated that respondents found it helpful for the Guidance to show the steps in the process which will be adopted when considering whether to give an intervention notice or make an intervention order. A few respondents incorporated in the remaining 12% asked for greater clarity in the process by which stakeholders can comment on a local authorities' performance.

Q3: Do you consider that the Guidance on Intervention Criteria is suitably derived from the *Traffic Management Act 2004* and can assist local authorities in improving management of the road network?

90% of respondents felt that the Guidance was suitably derived from the Act and would also assist local authorities in improving the management of the road network. The majority of the remaining 10% felt that the Order was not of significant assistance to local authorities; they will still need to produce their own checklists to ensure that they are meeting their network management duties. Some authorities felt this checklist could have been produced and appended to the Guidance.

The Welsh Ministers' view is that there cannot be one standard approach. Each local authority is unique and even though they may share similar characteristics to neighbouring authorities, they are likely to approach the duties in different ways. Hence no comprehensive robust checklist can be produced.

Q4: Do you think that the approach of identifying the types of question in the *Guidance on Intervention Criteria* that each local traffic authority should be asking themselves under the Act is useful?

Only 1% of respondents indicated that they did not find it useful for Welsh Ministers to identify the types of question in the Guidance that each local authority should be asking themselves when conducting their network management duties.

Q5: Do you think that the criteria are correct? If not, please state reasons. Will they ensure that local traffic authorities will carry out their network management duties properly?

75% of respondents believed that the criteria were correct. The main concern of the remainder was that there was an insufficiently strong reference to the local authority's requirement to work towards their own individual existing policies and priorities. Paragraph 13 of the consultation draft Guidance has been amended to place greater emphasis on this.

Q6: Do you think that the Guidance on Intervention Criteria covers all the necessary significant elements from the *Network Management Duty Guidance*? If not, which other elements should be included?

72% of respondents indicated that the Guidance covers all the significant elements from the *Network Management Duty Guidance*. However, information regarding Key Performance Indicators was identified by them as one area where improvements could be made.

The Welsh Ministers' view is that it is for local traffic authorities to adopt their own targets and indicators that show the full range of their performance against the duties. Authorities should adopt the mandatory Local Transport Plan (or in Wales the Regional Transport Plan (LTP/RTP)) or Local Implementation Plan indicators. Accordingly, no changes were made to the guidance.

Q7: The Guidance is aimed directly at a single traffic authority conducting its duties. However, section 26 of the Act makes provision in relation to functions which are exercised jointly and this is reflected in paragraph 42 of the Guidance. Are there examples of when any functions are currently exercised jointly, or might be in the near future?

The Guidance generally assumes that local authorities will conduct their network management duties individually. However, paragraph 42 of the *consultation draft Guidance on Intervention Criteria* read:

"There may be cases where authorities exercise jointly a function which is relevant to performing their network management duties. In relation to such cases, the Welsh Ministers may choose to make provision for the enforcement of these duties by order made by statutory instrument which may apply sections 20 to 25 of the Act with or without modifications."

27 of the 82 responses gave examples of where the local traffic authority may exercise duties jointly. These were mainly suggestions involving Traffic Manager Forums, (at regional and national level) and general working party meetings. The Welsh Ministers have noted that there are some small scale joint working arrangements in place around Wales. However, generally, the responses received indicated that there was insufficient evidence to suggest that currently local authorities are performing and exercising functions jointly.

With this in mind, the Welsh Ministers have decided to remove paragraph 42 from the *consultation draft Guidance on Intervention Criteria*. However, this action does not remove the possibility that local traffic authorities could jointly exercise their duties in the future.

Q8: Do you have any comments on the Initial Public Sector Regulatory Impact Assessment (RIA)?

The Regulatory Impact Assessment associated with the Act states “the Bill’s provisions overall should be cost neutral for local authorities”. The consultation responses indicated that a large proportion of local authorities and London boroughs (43 out of 56) expressed a view that the Act was not cost neutral.

The main area of concern was about the timing for the implementation of several sections of the Act. Local authorities especially are concerned that the Guidance on Intervention Criteria is being brought into force before the Street works and Permits regulations are implemented.

A small number of local authorities stated that they thought it was unfair for local authorities to be assessed before the full powers encompassed in the Act come into force. Some were concerned in general about the possibility of unfair intervention before authorities have all the tools they are due to receive from the Act, to carry out their duties and avoid intervention.

The implementation timetable for the Act was outside the remit for this consultation. The Welsh Ministers’ view is that the Guidance is a major element in the overall framework of the Act. It is important that it is produced at an early stage for that framework to be established.

Q9: Do you have any other comments on this consultation document?

A variety of comments were received in response to this question. Some of the most common issues are discussed below in the next section (G).

G: Other Issues Arising from Consultation Responses

- A change in text has taken place in Paragraph 14 as responses from the consultation (particularly from local authorities) indicated that they did not believe that the *consultation draft Guidance* reflected other modes of traffic to a significant degree.
- Paragraph 35 (8) and Paragraph 40 (5) have both been amended to include and acknowledge the role of statutory undertakers and public transport operators in network management.
- 21 of 82 respondents expressed a view that they wished to have timescales included in the Guidance in respect of the intervention stages.

The Welsh Ministers’ view is that it is not clear at this point in time what information will be requested from local authorities. Hence timescales are not included in the Guidance. This provides maximum flexibility for the Welsh Ministers, as timescales are likely to depend on the severity of the problem that arises. However, the information that the Welsh Ministers may request will be information that the local authority may have in their possession or could reasonably acquire, relating to the management of the road network.

A few respondents requested guidance on the process following intervention. Items in this category included:

- The process / procedure of how a traffic authority would take back control from a traffic director who had been appointed to an authority.
- No indication as to who would be assessing and monitoring the appointed traffic director.
- What length of time the traffic director is likely to be in post.
- Whether the traffic director will be responsible to the Assembly Government and if other staff will remain accountable to elected members.
- What would happen after the traffic director is appointed if the local authority still fails to meet the required performance levels.
- No mention of any appeals process in place for the appointment of a traffic director.

The Welsh Ministers' view is that these questions and issues relate to post intervention and hence do not fall within the scope of the Guidance, which covers the process up to the point of intervention.

A few respondents expressed a view that they would like a flowchart to be included in the Guidance. The thinking behind this is that the flowchart would outline the path leading up to intervention.

The Welsh Ministers believes it would be inappropriate to have a diagrammatic process included in a Statutory Instrument as an alternative to the Guidance.

There have also been a small number of additional minor amendments to paragraphs throughout the *consultation draft Guidance on Intervention Criteria* and the associated draft Regulatory Impact Assessment. An example of this is in Paragraph 46 of the Guidance. The word "mitigating" has now been replaced by the word "individual". The change is to clarify the wording and make it more reader friendly. It should also reduce the possibility of the reader misinterpreting the document.

Finally, four consultation responses received in response to the Welsh consultation were not considered as part of the above report. Two responses received from the North and South Wales Fire Service were minimal in content and generally agreed with the draft consultation document. One response from a Welsh Highway Authority raised issues that have been covered in the report and a response from Welsh Water, which operates predominately in Wales, also raised issues that have been covered in the report.

H: Further Information

Copies of this consultation report can be obtained from the Welsh Assembly Government by contacting Stephen Chandler at telephone 02920 826441.

I: List of Stakeholders - England

Local Authorities

Barking and Dagenham	Hertfordshire	Sandwell
Barnet	Hillingdon	Sefton
Barnsley	Houslow	Sheffield City
Bath & NE Somerset	Hull City	Shropshire
Bedfordshire	Isle of Wight	Slough
Bexley	Islington	Solihull
Birmingham	Kensington and Chelsea	Somerset
Blackburn & Darwen	Kent	South Gloucestershire
Blackpool	Kingston upon Thames	South Tyneside
Bolton	Kirklees	Southampton
Bournemouth	Knowsley	Southend
Bracknell Forest	Lambeth	Southwark
Bradford City	Lancashire	St Helens
Brent	Leeds City	Staffordshire
Brighton & Hove	Leicester	Stockport
Bristol	Leicestershire	Stockton on Tees
Bromley	Lewisham	Stoke on Trent
Buckinghamshire	Lincolnshire	Suffolk
Bury	Liverpool	Sunderland
Calderdale	Luton	Surrey
Cambridgeshire	Manchester	Sutton
Camden	Medway	Swindon
Cheshire	Merton	Tameside
Cornwall	Middlesbrough	Telford & Wrekin
Coventry	Milton Keynes	Thurrock
Croydon	Newcastle	Torbay
Cumbria	Newham	Tower Hamlets
Darlington	Norfolk	Trafford
Derby	North East Lincolnshire	Wakefield
Derbyshire	North Lincolnshire	Walsall
Devon	North Somerset	Waltham Forest
Doncaster	North Tyneside	Wandsworth
Dorset	North Yorkshire	Warrington
Dudley	Northamptonshire	Warwickshire
Durham	Northumberland	West Berkshire
Ealing	Nottingham	West Sussex
East Riding	Nottinghamshire	Westminster
East Sussex	Oldham	Wigan
Enfield	Oxfordshire	Wiltshire
Essex	Peterborough	Wirral
Gateshead	Plymouth	Wokingham
Gloucestershire	Poole	Wolverhampton
Greenwich	Portsmouth	Worcestershire
Hackney	RB Windsor & M.	York City
Halton	Reading	City of London
Hammersmith and Fulham	Redbridge	
Hampshire	Redcar and Cleveland	
Haringey	Richmond	
Harrow	Rochdale	
Hartlepool	Rotherham	
Havering	Rutland	
Herefordshire	Salford	

Other Key Stakeholders

Communities and Local Government

Department of Health

Department for Education and Skills

Department for Environment, Food & Rural Affairs

Department for Work and Pensions

Department of Trade and Industry

Department of Culture, Media and Sport

Highway Authority and Utilities Committee

Home Office

HM Treasury

London Councils (formerly The Association of London Government)

Members of the Network Management Advisory and Working Group

National Joint Utilities Group

Major utility organisations in England

Relevant Professional Institutions in England

Roads Department, Northern Ireland

Scottish Executive

Traffic Commissioners

Transport for London