

2007 No.339

HIGHWAYS, ENGLAND

**The Traffic Management (Guidance on Intervention Criteria)
(England) Order 2007**

<i>Made</i>	- - - -	<i>7th February 2007</i>
<i>Laid before Parliament</i>		<i>14th February 2007</i>
<i>Coming into force</i>	- -	<i>12th March 2007</i>

The Secretary of State for Transport makes the following Order in exercise of the powers conferred by section 27 of the Traffic Management Act 2004(a).

Citation, commencement and application

1.—(1) This Order may be cited as the Traffic Management (Guidance on Intervention Criteria) (England) Order 2007 and shall come into force on 12th March 2007.

(2) This order applies as respects England only(b).

Guidance on intervention criteria

2. The guidance about the criteria which the Secretary of State proposes to apply for the purpose of deciding whether to give an intervention notice or make an intervention order is appended in the Schedule to this order.

Signed by authority of the Secretary of State for Transport

7th February 2007

G. Merron
Parliamentary Under Secretary of State,
Department for Transport

(a) 2004 c.18.

(b) See definition of “appropriate national authority” in section 31 of the Traffic Management Act 2004.

TRAFFIC MANAGEMENT ACT 2004
NETWORK MANAGEMENT DUTIES
GUIDANCE ON INTERVENTION CRITERIA FOR ENGLAND

INTRODUCTION

1. Section 16 of the Traffic Management Act 2004 (“the Act”) introduced a new network management duty for local traffic authorities. Such authorities are required to manage their road network to secure the expeditious movement of traffic on that network and to facilitate the same on the networks of others.

2. Section 17 of the Act requires a local traffic authority (“an authority”) to make appropriate arrangements for planning and carrying out the duty and these arrangements must include provision for the appointment of a traffic manager.

3. Section 19 empowers the Secretary of State to direct an authority to provide him, within a specified period, with information connected with any aspect of the performance of their duties under sections 16 and 17.

4. Section 20 enables the Secretary of State to give an “intervention notice” to an authority if he considers that the authority may be failing properly to perform any of their duties under sections 16 and 17.

5. Section 21 empowers the Secretary of State to make an “intervention order” making provision for or in connection with the appointment of a traffic director if he is satisfied that an authority are failing properly to perform any duty under those sections.

6. The intervention notice is the first formal stage in the enforcement of the network management duties. It will give brief particulars of the grounds for giving the notice, offer the authority the opportunity to make representations or proposals and may require the authority to provide certain information.

7. Further action may not be necessary but if it is, intervention in the strictest sense will occur when provision is made by way of an intervention order for or in connection with the appointment of a traffic director. The traffic director will be given such objectives and powers as the Secretary of State considers will secure that the duty in question is properly performed. Section 21(5) sets out the general powers which may be conferred on a traffic director and these will allow him to monitor and report on any matter, intervene in activities of an authority and carry out any of their functions.

8. In November 2004 the Secretary of State for Transport published guidance under section 18 of the Act entitled *Network Management Duty Guidance*. This sets out in more detail guidance about the techniques of network management and other matters relating to the performance of the duties imposed by sections 16 and 17. In particular Annex A to the guidance, which is headed *Good Practice Advice on Techniques and Approach*, describes how an authority may achieve effective improvements to the management of road networks. In performing the duties under sections 16 and 17, authorities must have regard for this guidance.

9. Section 27 of the Act requires the Secretary of State, the appropriate national authority as respects England, to give guidance about the criteria he proposes to apply for the purpose of deciding whether to give an intervention notice or make an intervention order and to append that guidance to an order made by statutory instrument. This schedule sets out that guidance which applies in relation to all authorities in England. It should be read in conjunction with the *Network Management Duty Guidance* and Part 2 of the Act.

THE CONTEXT

10. Efficient movement on our road networks is essential for both society and a successful economy. A number of shared priorities have been agreed which provide a focus for central and local government in terms of improving public services and, in relation to transport, reducing the problems of congestion. 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 local level.

11. 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 Secretary of State, 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 road network.

12. It is hoped that the potential for intervention will encourage authorities to ensure that they carry out their network management duties. Nevertheless, if concerns develop that an authority may not be addressing the duties imposed by sections 16 and 17 of the Act, the Secretary of State intends to work with that authority, through an engagement process, to encourage the authority to recover so as to avoid reaching the stage where a traffic director has to be appointed. However, if it becomes clear that recovery is not being achieved, or is not an option, to the extent that he is satisfied that an authority are failing properly to perform any duty, he may make an intervention order making provision for or in connection with the appointment of a traffic director.

FUNDAMENTAL PRINCIPLES

13. The network management duty, as set out in section 16 of the Act, is qualified to the extent that each authority have other obligations, policies and objectives which they must also address. Accordingly, the duty should not take precedence over everything else that they do. The Secretary of State recognises that all authorities face different challenges and have their own obligations, policies and objectives which will have to be taken into account when performing the duty. In addition, in assessing an individual authority's performance, he will also consider their approach to the duty within the wider circumstances in which traffic presents itself on their network. The sort of circumstances envisaged could be projects involving economic regeneration, house building or special events. The Secretary of State will not expect every authority to approach the duty in exactly the same way.

14. Under the Act, it is for individual authorities to determine how they will frame the duty within the broader range of their responsibilities. For example, it should not undermine an authority's road safety objectives. Indeed, authorities should plan for both the expeditious and safe movement of all traffic, including pedestrians and cyclists. Each authority should set their own objectives for the expeditious movement of traffic within the context of their other obligations, policies and objectives.

15. By virtue of section 17 of the Act, an authority must make such arrangements as they consider appropriate for planning and carrying out the action to be taken in performing the network management duty. These arrangements must be put in place, regardless of the authority's other obligations, policies and objectives, must include provision for a number of matters specified in that section and their effectiveness must be kept under review.

16. Each authority should aim to show that their approach to securing the expeditious movement of traffic, both on their own network and the networks of others, is challenging but realistic. The Secretary of State will be looking for all authorities to demonstrate a robust strategy which integrates with their other responsibilities and has been adopted wherever it is relevant throughout their organisation.

17. In terms of priorities for keeping the network moving efficiently, the same level of activity is not expected in relation to every road in an authority's area. Authorities need not concentrate on roads where there is relatively little traffic movement and where this is unlikely to change in the

foreseeable future. However, they should know which of their roads fall into this category and which roads are important for the movement of people and goods. Authorities should pay careful attention to the latter category by, for example, facilitating the efficient movement of traffic on key public transport routes and ensuring that the operation of any bus priority measures (such as bus lanes) is subject to minimal disruption.

THE NETWORK MANAGEMENT DUTIES

18.—(1) The network management duties are as set out in sections 16 and 17 of the Act and for the purposes of determining the nature and extent of each duty reliance should only be placed on the precise wording of the legislation. However it may assist to explore the duties in more detail and accordingly they are set out as follows in a slightly expanded format.

(2) Under section 16 (the network management duty), an authority must 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—

- (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.

(3) 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 in the following sub-paragraphs.

(4) An authority has a duty to make such arrangements as they consider appropriate for—

- (a) planning the action to be taken in performing the network management duty, and
- (b) carrying out that action.

(5) An authority has a duty to ensure that these arrangements include provision for the appointment of a traffic manager.

(6) 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 they—

- (a) identify things which are causing—
 - (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—
 - (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—
 - (i) in response to, or
 - (ii) in anticipation of,anything so identified,

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.

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

- (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) their organisation,

- (ii) their decision making processes, and
- (iii) the implementation of their decisions; and
- (c) assess their performance in managing their network.

(8) An authority has a further duty to keep under review the effectiveness of the arrangements they have in place under section 17 of the Act.

PROCESSES AND OUTCOMES

19. Section 17 of the Act focuses on the importance of making arrangements for network management. The emphasis on process reflects the fact that management of the road network is not something that an authority should simply add on to their existing operations, but should integrate seamlessly within their wider arrangements to tackle congestion.

20. Moreover, it is not always possible to identify direct links between individual actions by an authority through the arrangements and processes they have in place and the outcomes of these actions in terms of network performance. In some cases the results might have been worse but for the actions of an authority, while in others events will have been entirely beyond their control. In any event, an authority should have the arrangements and the review in place, as required under section 17.

21. When Part 2 of the Act came into effect, the first steps were to set up arrangements for developing the duties. Attention in this initial phase has been placed on whether an authority have established the arrangements and review required under section 17. These are always required, regardless of local circumstances.

22. However, the Act indicates that authorities may take any action to avoid, eliminate or reduce congestion or other disruption to movement on the network. Such action may involve the exercise of any power to regulate or coordinate the uses made of any road (or part of a road) in the road network (whether or not the power was conferred on them in their capacity as a traffic authority). It is the outcomes of the action taken that are important in the longer term, especially as performance indicators become agreed and adopted more widely. Authorities should make every effort to focus on taking new action as required, adopting appropriate performance indicators, whether developed centrally or locally and on improving the outcomes as quickly as circumstances allow.

23. The core of the duty is for authorities to manage their network better by tackling road congestion. This is important in large urban areas and many other locations too. In order to demonstrate performance and improvements, authorities should adopt the mandatory indicators used in the Local Transport Plan and Local Implementation Plan processes. All authorities are expected to keep in step with national transport policies and any centrally developed indicators as they are published. However, authorities should adopt targets and indicators that show the full range of their performance against their network management duties and to achieve this many authorities will wish to supplement national performance indicators with indicators which are determined locally.

24. The Secretary of State will expect to see evidence, within the reporting process, of authorities accomplishing their targets, or at least being on course to do so. However, it is recognised that even where outcomes can be measured, the action which an authority take will vary depending on local needs.

DEMONSTRATING THE PERFORMANCE OF THE NETWORK MANAGEMENT DUTIES

25. Section 18(2) of the Act requires an authority to have regard for the *Network Management Duty Guidance*. Paragraph 47 of the guidance obliges them to reflect the arrangements they have established for fulfilling the network management duty in their Local Transport Plan (“LTP”) or, in the case of a London borough council and the Common Council of the City of London, in their Local Implementation Plan (“LIP”).

26. An authority should report on how they are managing their network and tackling congestion within current reporting procedures. Arrangements for, and evidence associated with, network management should not only be reflected in their LTP or, where applicable, LIP but also in any interim monitoring reports. While this guidance necessarily reflects the current reporting regime, different reporting methods may develop in the future.

27. It is intended that any reporting process should not impose an unnecessary burden upon an authority. They are not expected to develop a free-standing network management plan for submission to the Secretary of State, although it is recognised that some authorities are finding it useful for their own purposes to produce such a plan.

28. It is the responsibility of each authority to provide clear evidence that the network management duty is being properly performed and this should include details of the progress made in respect of the priorities that the authority have set themselves. The reporting process provides opportunities for authorities to demonstrate their ability to carry out their network management duties and their successful progress in doing so.

29. Where authorities participate in a joint LTP, each should ensure that sufficient evidence has been presented to demonstrate that that authority are properly performing each of their network management duties.

REPORTING IN LONDON

30. The network management duties apply to the London borough councils, the Common Council of the City of London and Transport for London. The former are presently required to produce a LIP for Transport for London. The purpose of a LIP is somewhat different from that for an LTP. It is primarily a vehicle for the local implementation of the Mayor's Transport Strategy. However, London borough councils and the Common Council should describe their approach to their network management duties in their LIP and annual monitoring reports in the same way that an authority outside London do in their LTP and LTP monitoring reports. Their approach should include a description of their performance relating to that part of the Greater London strategic road network^(a) within their area and on working together with Transport for London. This information should be made available to the Secretary of State.

31. Transport for London is a local traffic authority and should offer evidence supporting its actions in relation to the road networks in London for which it is responsible and to working together with the London borough councils, the Common Council and where appropriate with the Secretary of State. Transport for London should describe its approach to the network management duties in a reporting process agreed with the Secretary of State.

32. As intervention powers rest with the Secretary of State rather than the Mayor, Transport for London is unable to take any action under Part 2 of the Act but will necessarily work closely with the London borough councils and the Common Council on matters affecting their respective network management duties. However, information relating to causes for concern to the Mayor could be forwarded to the Secretary of State for him to consider whether any action is required.

ASSESSMENT OF EVIDENCE

33. The Secretary of State will assess reports from authorities, as well as any supporting documents, to determine how they have performed their network management duties. He will also take into account any serious issue about traffic movement on a road network, of which he becomes aware through means other than normal reporting. In conducting the assessment, the Secretary of State will, in particular, address five primary questions as follows. In relation to each primary question, although not exhaustive, paragraphs 34 to 46 set out examples of subordinate questions that the Secretary of State may consider.

(a) S.I. 2005/476.

TO WHAT EXTENT HAVE AN AUTHORITY HAD REGARD FOR THE NETWORK MANAGEMENT DUTY GUIDANCE IN PERFORMING THEIR NETWORK MANAGEMENT DUTIES? (See section 18(2) of the Act)

34.—(1) Local circumstances will have a significant influence not only on how an authority manage their network, but also on how they go about making arrangements for the performance of that duty and which traffic management techniques they choose to adopt. It is, therefore, for each individual authority to decide how they plan to perform their duties relating to traffic management.

(2) However, some features of the *Network Management Duty Guidance* are common to all authorities, albeit to differing degrees. All of the following considerations need to be adequately addressed as a minimum indication that an authority have had regard for the *Network Management Duty Guidance* (“NMDG”)—

- (a) considering the needs of all road users;
- (b) coordinating and planning works and known events;
- (c) gathering information and providing information needs;
- (d) incident management and contingency planning;
- (e) dealing with traffic growth;
- (f) working with all stakeholders - internal and external;
- (g) ensuring parity with others; and
- (h) providing evidence to demonstrate network management.

Considering the needs of all road users. (See NMDG paragraphs 26, 51, 87-90 and 128)

35.—(1) How do an authority manage the road space for everyone?

(2) Have the authority set out a clear understanding of the problems facing the different parts of their network?

(3) Are they aware of the needs of different road users?

(4) Have they balanced policies for addressing these problems and needs?

(5) Have the local authority identified and grouped roads according to their location and the activities on them?

(6) How have the authority shown that they have balanced competing demands while continuing to manage their network efficiently?

(7) In reaching decisions on competing demands, have they taken account of their policies and the particular circumstances of the part of the network being considered?

(8) Are the authority working together with local businesses, retailers, representatives of the freight and road haulage industry, public transport operators and statutory undertakers?

(9) Are they developing means for ensuring economic and efficient servicing of premises and deliveries, whilst mitigating adverse problems?

Coordinating and planning works and known events. (See NMDG paragraph 27)

36.—(1) To what extent have the authority promoted pro-active coordination of activities on the network?

(2) To what degree have they adopted a planned, evidence-led approach to known events?

(3) Have they developed, or are they developing, contingency plans for unforeseen events?

Gathering information and providing information needs. (See NMDG paragraphs 28, 100, 101, 137 and 138)

37.—(1) How effective are the arrangements the authority have in place to gather accurate information about planned works and events?

(2) How do the authority organise planned works and events to minimise their impact and agree or stipulate their timing to best effect?

(3) Do the authority provide access on demand to information, from the authority's systems for recording and coordinating utilities' works and road works, to utility companies, contractors and adjoining authorities?

(4) Do the authority have, or aim to have, a good and timely source of travel information for road users and the community?

(5) Does this allow road users to choose a different route or mode of travel or to delay or defer their proposed journey?

(6) Do the authority work with a variety of travel information providers and do they communicate through a wide range of channels?

(7) What evidence has been provided to show how well the authority are providing information to other street authorities and meeting existing statutory obligations such as their duty to keep a street works register?

Incident management and contingency planning. (See NMDG paragraphs 29 and 50)

38.—(1) Have the authority established contingency plans for dealing with situations outside the authority's control promptly and effectively, as far as is reasonably practicable?

(2) Have the authority provided evidence to demonstrate that they have ensured that all parties involved in making these contingency arrangements work, have been, or are, fully consulted during their development?

(3) Have these parties the information they need to put the plans into practice quickly?

Dealing with traffic growth. (See NMDG paragraph 30)

39.—(1) What evidence has been given to show that an authority have identified trends in traffic growth on specific routes?

(2) What policies have been put in place for managing incremental change?

Working with all stakeholders - internal and external. (See the Act and NMDG paragraphs 31 to 33 and 57 to 63)

40.—(1) What evidence is there to show that those responsible within the authority for exercising any power to regulate or coordinate the uses made of any road or part of a road in the road network are aware of, and act upon, the authority's responsibilities arising in relation to the network management duty?

(2) Do authorities that are in two-tier areas liaise with all the relevant departments in the second tier organisations whose work affects the road network?

(3) Do authorities ensure that other bodies (e.g. planning authorities) are aware of the duty and their impact on the movement of traffic?

(4) What evidence is there to show that the authority take actions that include consultation on initiatives, the sharing of information needed to meet the duty, processes for ensuring that policies are consistent and agreeing joint working arrangements, including particularly with the Secretary of State and Transport for London?

(5) Have the authority involved the police, statutory undertakers, Passenger Transport Executives, bus operators, the Traffic Commissioners, residents, local businesses and different road users where appropriate in decision-making processes?

Ensuring parity with others. (See NMDG paragraphs 68 and 99)

41.—(1) Do the authority apply the same standards and approaches to their own activities as they do to those of others and do they provide evidence of this, particularly in relation to utilities' street works and developers' works?

(2) Do they use locally determined indicators and where relevant any centrally developed key performance indicators?

Providing evidence to demonstrate network management. (See NMDG paragraph 47)

42.—(1) Have the arrangements established by an authority for performing the duty been reflected in their LTP, LIP or any other interim monitoring report?

(2) Do reports about the duty performed by an authority provide clear evidence to demonstrate how they manage their road network?

TO WHAT EXTENT HAVE THE AUTHORITY CONSIDERED AND WHERE APPROPRIATE TAKEN ACTION AS ENVISAGED BY SECTION 16(2) OF THE ACT?

43.—(1) Does the report from the authority about their performance demonstrate what action the authority have considered in order to perform the network management duty and the outcomes of those deliberations?

(2) Have the authority shown evidence that they have taken action that they consider will contribute to securing the more efficient use of their road network or the avoidance, elimination or reduction of congestion or other disruption to the movement of traffic on their road network or a road network for which another authority is the traffic authority?

(3) Have the authority shown evidence that they have taken any other action that they consider to be relevant?

TO WHAT EXTENT HAVE THE AUTHORITY EXERCISED ANY POWER IN SUPPORT OF THIS ACTION?

44.—(1) Does the report show what powers have been considered in support of the action taken to perform the network management duty?

(2) Has any power been exercised so as to regulate or coordinate the uses made of any road, or part of a road, in the road network, whether or not the power was conferred on them in their capacity as a traffic authority?

TO WHAT EXTENT HAVE INDICATORS BEEN ADOPTED AND TARGETS TO REDUCE CONGESTION BEEN MET?

45.—(1) Have the authority established performance indicators and relevant targets to enable them to measure expeditious movement of traffic?

(2) Have they established effective monitoring systems?

(3) Is there evidence that the authority have used such indicators, targets and systems to develop their plans, drive their delivery and report on performance?

TO WHAT EXTENT DO INDIVIDUAL CIRCUMSTANCES ACCOUNT FOR AN APPARENT FAILURE OF A DUTY?

46. To what extent is the apparent failure of a duty a consequence of—

(a) the authority having paid regard to their other obligations, policies and objectives (see section 16(1) of the Act);

(b) the action or inaction of another authority (see section 16(1)(b) of the Act); or

- (c) actions, or a lack of them, that could be considered reasonable when compared with a sample of—
 - (i) neighbouring authorities,
 - (ii) authorities of a similar type,
 - (iii) authorities with similar circumstances, or
 - (iv) all authorities?

REQUEST FOR INFORMATION

47. If the Secretary of State considers that he does not have sufficient information to fully address any particular question, he may contact an authority informally and request further information within a specified period.

48. While the informal approach will probably be the main method of obtaining further information, section 19 of the Act nevertheless enables the Secretary of State to formally direct an authority to provide him, 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.

49. A direction under section 19 may be given to a single authority, to two or more authorities or to authorities of a description specified in the direction and authorities should respond within the period specified in the direction.

CONSULTATION BEFORE GIVING AN INTERVENTION NOTICE OR MAKING AN INTERVENTION ORDER

50. The Secretary of State must consult with the Mayor of London before giving an intervention notice to, or making an intervention order in relation to, Transport for London, a London borough council or the Common Council of the City of London (see sections 20(5) and 21(10) of the Act).

CRITERIA FOR DECIDING WHETHER TO GIVE AN INTERVENTION NOTICE

51. The Secretary of State proposes to apply the following criteria for the purpose of deciding whether an authority may be failing properly to perform any of their duties under sections 16 and 17 of the Act and whether to give an intervention notice.

CRITERION No.1 (Section 17 duties)

52. The extent to which—

- (a) the evidence (see paragraphs 34 to 46 above) that an authority have or have not—
 - (i) had regard for the *Network Management Duty Guidance* in performing their network management duties;
 - (ii) considered and where appropriate taken action as envisaged by section 16(2) of the Act;
 - (iii) exercised any power in support of that action;
 - (iv) adopted indicators;
 - (v) met targets to reduce congestion; and
 - (vi) been the subject of individual circumstances which account for an apparent failure of a duty;
- (b) any specified information obtained under section 19 of the Act;
- (c) where relevant, the outcome of the consultation with the Mayor of London; and
- (d) any other relevant evidence available,

seem to indicate to the Secretary of State that the authority may not have complied with one or more of the requirements of section 17 of the Act and as a consequence may be failing properly to perform any of their duties under that section.

53. In applying this criterion, the Secretary of State will address the following questions.

- (a) Have the authority considered what arrangements might be appropriate for—
 - (i) planning the action to be taken in performing the duty under section 16 of the Act; and
 - (ii) carrying out that action;and where considered appropriate have they made such arrangements? (See section 17(1)).
- (b) Do the arrangements include provision for the appointment of a traffic manager? (See section 17(2)).
- (c) Do the arrangements include provision for establishing processes for ensuring, so far as may be reasonably practicable, that the authority—
 - (i) identify things which are causing road congestion on their road network, or other disruption to the movement of traffic on that network;
 - (ii) identify things (including future occurrences) which have the potential to cause road congestion on their road network, or other disruption to the movement of traffic on that network; and
 - (iii) consider any possible action that could be taken in response to, or in anticipation of, anything so identified? (See section 17(4)).

In addressing this question the Secretary of State will not expect to see provision for establishing processes for the consideration or identification of anything appearing to have only an insignificant effect (or potential effect) on the movement of traffic on the authority's road network.

- (d) Do the arrangements include provision for ensuring that the authority—
 - (i) determine specific policies or objectives in relation to different roads or different classes of road in their road network;
 - (ii) monitor the effectiveness of their organisation and decision-making processes and the implementation of their decisions; and
 - (iii) assess their performance in managing their road network? (See section 17(5)).
- (e) Have the authority kept under review the effectiveness of these arrangements? (See section 17(6)).

CRITERION No.2 (Section 16 - the network management duty)

54. The extent to which—

- (a) the evidence (see paragraphs 34 to 46 above) that an authority have or have not—
 - (i) had regard for the *Network Management Duty Guidance* in performing their network management duties;
 - (ii) considered and where appropriate taken action as envisaged by section 16(2) of the Act;
 - (iii) exercised any power in support of that action;
 - (iv) adopted indicators;
 - (v) met targets to reduce congestion; and
 - (vi) been the subject of individual circumstances which account for an apparent failure of a duty;
- (b) any specified information obtained under section 19 of the Act;
- (c) where relevant, the outcome of any consultation with the Mayor of London;

- (d) the conclusions reached after applying Criterion No.1; and
- (e) any other relevant evidence available,

seem to indicate to the Secretary of State that the authority may not be managing their road network with a view to achieving, so far as may be reasonably practicable having regard for their other obligations, policies and objectives, the objectives of securing the expeditious movement of traffic on their road network and facilitating the expeditious movement of traffic on road networks for which another authority are the traffic authority and as a consequence may be failing properly to perform their network management duty under section 16 of the Act.

55. In applying this criterion the Secretary of State will address the following questions.

- (a) What action, if any, are the authority planning to take in performing their network management duty?
- (b) What action, if any, have the authority actually taken in the performance of their network management duty?
- (c) What evidence is there to show that the authority consider that such action includes action which will contribute to securing—
 - (i) the more efficient use of their network; or
 - (ii) the avoidance, elimination or reduction of road congestion or other disruption to the movement of traffic on their road network or a road network for which another authority are the traffic authority?
- (d) What powers to regulate or co-ordinate the uses made of any road (or part of a road) in the road network, if any, do the authority propose to exercise as part of any planned action?
- (e) Have the authority exercised any such powers as part of any action taken?
- (f) Have the authority appointed a traffic manager?
- (g) If so, is the traffic manager performing such tasks as the authority consider will assist them to perform their network management duty?
- (h) What things have the authority identified which are causing—
 - (i) road congestion on their road network; or
 - (ii) other disruption to the movement of traffic on that network?
- (i) What things have the authority identified (including future occurrences) which have the potential to cause—
 - (i) road congestion on their road network; or
 - (ii) other disruption to the movement of traffic on that network?
- (j) What possible action have the authority considered could be taken in response to, or in anticipation of, anything so identified?
- (k) To what extent has any such action been taken?
- (l) What specific policies or objectives have the authority determined in relation to different roads or classes of road in their road network?
- (m) What is the outcome of the authority's monitoring of the effectiveness of their—
 - (i) organisation;
 - (ii) decision-making processes; and
 - (iii) the implementation of their decisions?
- (n) What is the outcome of the authority's assessment of their performance in managing their road network?
- (o) What is the outcome of the authority's review of the effectiveness of the arrangements they have in place under section 17 of the Act?

CRITERIA FOR DECIDING WHETHER TO MAKE AN INTERVENTION ORDER

56. The Secretary of State proposes to apply the following criteria for the purpose of deciding whether an authority are failing to properly perform any of their duties under sections 16 and 17 of the Act and whether to make an intervention order.

CRITERION No.3 (Section 17 duties)

57. The extent to which—

- (a) the evidence (**see paragraphs 34 to 46** above) that an authority have or have not—
 - (i) had regard for the *Network Management Duty Guidance* in performing their network management duties;
 - (ii) considered and where appropriate taken action as envisaged by section 16(2) of the Act;
 - (iii) exercised any power in support of that action;
 - (iv) adopted indicators;
 - (v) met targets to reduce congestion; and
 - (vi) been the subject of individual circumstances which account for an apparent failure of a duty;
- (b) any specified information obtained under section 19 of the Act;
- (c) where relevant, the outcome of the further consultation with the Mayor of London;
- (d) any representations or proposals made, and any specified information provided, in response to an intervention notice; and
- (e) any other relevant evidence available,

satisfy the Secretary of State that the authority have not complied with one or more of the requirements of section 17 of the Act, are, as a consequence, failing properly to perform any of their duties under that section and are unlikely to be able to rectify such failure within a reasonable time.

58. In applying this criterion, the Secretary of State will re-address the questions set out in paragraph 53.

CRITERION No.4 (Section 16 - the network management duty)

59. The extent to which—

- (a) the evidence (**see paragraphs 34 to 46** above) that an authority have or have not—
 - (i) had regard for the *Network Management Duty Guidance* in performing their network management duties;
 - (ii) considered and where appropriate taken action as envisaged by section 16(2) of the Act;
 - (iii) exercised any power in support of that action;
 - (iv) adopted indicators;
 - (v) met targets to reduce congestion; and
 - (vi) been the subject of individual circumstances which account for an apparent failure of a duty;
- (b) any specified information obtained under section 19 of the Act;
- (c) where relevant, the outcome of the further consultation with the Mayor of London;
- (d) any representations or proposals made, and any specified information provided, in response to an intervention notice;
- (e) the conclusions reached after applying Criterion No.3; and

(f) any other relevant evidence available,

satisfy the Secretary of State that the authority are not managing their road network with a view to achieving, so far as may be reasonably practicable having regard to their other obligations, policies and objectives, the objectives of securing the expeditious movement of traffic on their road network and facilitating the expeditious movement of traffic on road networks for which another authority are the traffic authority, are, as a consequence, failing properly to perform their network management duty under section 16 of the Act and are unlikely to be able to rectify such failure within a reasonable time.

60. In applying this criterion the Secretary of State will re-address the questions set out in paragraph 55.

EXPLANATORY NOTE

(This note is not part of the Order)

As part of the process of enforcing the network management duties imposed by sections 16 and 17 of the Traffic Management Act 2004 (“the Act”), the Secretary of State may give an intervention notice if he considers that a local traffic authority in England may be failing properly to perform any of those duties.

If he is satisfied that such local traffic authority are failing properly to perform any of those duties he may make an intervention order making provision for, or in connection with, the appointment of a traffic director.

In accordance with section 27 of the Act, this Order sets out, as respects England, guidance about the criteria which the Secretary of State proposes to apply for the purpose of deciding whether to give an intervention notice or make an intervention order.

A Regulatory Impact Assessment was produced for the Traffic Management Bill and is available on the Department for Transport’s web site at—

<http://www.dft.gov.uk/consultations/aboutria/ria/thetrafficmanagementbillregu5592?version=1>

As the Order has no impact on the costs of business, charities or voluntary bodies, a Public Sector Regulatory Impact Assessment has been prepared and this is available from Traffic Management Division 6, Department for Transport, Zone 3/22 Great Minster House, 76 Marsham Street, London SW1P 4DR. A copy of the Public Sector Regulatory Impact Assessment has been placed in the library of each House of Parliament and may also be accessed on the OPSI web site at www.opsi.gov.uk.