

Annex G

Compliance, Enforcement and Privacy

Introduction

- G.1** This Annex describes the processes necessary to secure compliance across a range of charging schemes and how enforcement could be managed when compliance is not achieved.
- G.2** In a separate section it will consider issues arising from the need to guarantee privacy. The issue of privacy clearly reads across to the concepts surrounding business architecture described in Annex I.
- G.3** In this report, compliance is defined as the process of ensuring that those paying the charge are able to do so as efficiently as possible. Enforcement is the process that follows when payments are not made properly. The more efficiently that compliance is managed, the fewer the resources that enforcement will require. At the same time, effective enforcement involving a high risk of real sanction against the evader is an important tool in securing compliance.
- G.4** In developing strategies for compliance and enforcement, this report draws on good practice in other areas, both in the administration of road charges (in particular the London Congestion Charge) and the management of other activities in which the motorist is required to relate to Government. It also considers the constraints imposed by the current state of data held by Government on the vehicle fleet and its users, and examines whether a system of charging might require Government to change its approach more generally.

Structure and dynamics of the vehicle fleet

- G.5** There are currently some 30 million vehicles in the UK, of which nearly 27 million are cars. There are about 10 million notifications per year to the Driver and Vehicle Licensing Agency (DVLA) that require the issue of a new vehicle registration document – including changes of keeper, changes of address and name, first registration of vehicles and scrappage. At any one time it is estimated that about 5 per cent of the total vehicle fleet is in the hands of the motor trade, with traders currently enjoying an exemption from notifying DVLA of keepership if they possess the vehicle for less than 90 days. Thus a compliance strategy will need to accommodate the fluidity of vehicle keepership, and the frequency with which vehicles change hands.
- G.6** The average life of a vehicle is about 14 years. In recent years, the value of older vehicles has dropped significantly, especially as the price of scrap metal has fallen, meaning that vehicles have a negative value at the end of their lives. This has meant that the car has become in

many cases an item that is of low value but involves significant running and maintenance costs.

- G.7** It is estimated that about 2 million vehicles are kept by vehicle fleet operators; but fleets are responsible for about 30 per cent of annual UK vehicle mileage and about 1 million new car purchases each year. Fleet operators therefore have an important impact on the new vehicle market and are likely to be affected disproportionately by the introduction of charging schemes at all levels. They also have a potentially important role in driving technological change.

Current information on vehicles held by central Government

- G.8** The national vehicle record is held by the Driver and Vehicle Licensing Agency (DVLA), with information on vehicles registered in Northern Ireland held by Driver and Vehicle Licensing Northern Ireland (DVLNI), acting as DVLA's agent in vehicle licensing matters. The Agencies record the keeper of a vehicle rather than the owner, and issue a Vehicle Registration Document (V5) to the keeper in respect of every registered vehicle. This is not a document of title and is based on information supplied by the keeper, and updated when a vehicle is licensed or when it changes hands.
- G.9** Where DVLA has not been notified of changes, the record has in the past fallen out of date. Changes to vehicle registration and licensing procedures introduced early in 2004¹, which mean that the keeper has a clear liability to tax a vehicle, and that the liability only ends when DVLA is notified that the vehicle has changed hands, are designed to ensure that vehicles do not fall out of the system as a result of keeper inaction, and thus to improve the accuracy of the vehicle record.

Principles of compliance and enforcement

- G.10** Any compliance strategy will need to reflect the following principles:
- ease of use – charge-payers must have easy access to the means of registration and payment. Systems must dovetail with those already in place to manage the interface between the motorist and Government
 - ease of understanding – charge-payers must know exactly what is expected of them
 - default to compliance – ensuring that it is not possible to slip into evasion through inaction, and thus minimizing the need for enforcement
 - customer service – good customer service is key to delivering effective compliance
 - social inclusion – to be achieved through ensuring the widest range of methods of payment and payment outlets.

¹ The Road Vehicles (Registration and Licensing) (Amendment) (No 3) Regulations 2003 SI 2003/2981.

- G.11** Enforcement will need to reflect the following key principles:
- enforcement must provide an effective sanction against evasion, ensuring that the public is aware that there is an overwhelming likelihood of being caught and facing significant penalties as a result
 - penalties should be proportionate and consistent with those for other infringements, while providing effective sanction against persistent evaders, and should be well understood by potential evaders
 - enforcement should be simple and cost-effective, without imposing disproportionate additional burdens on police or courts
 - any enforcement régime must be consistent with Human Rights principles and legislation.
- G.12** These principles will need to be applied in dealing with a number of issues, which are set out below.

Compliance issues

- G.13** Key compliance issues are likely to be:
- identifying the person liable to pay the charge, and ensuring that changes in the identity of the vehicle user can be properly reflected when collecting the charge
 - the management of the installation of on-board equipment
 - ensuring that charge-payers can pay as easily as possible and that the charges are well-publicised and transparent
 - the management of exemptions.

Identifying the charge-payer

- G.14** The most important single issue is likely to be that of identifying the person liable to pay the charge. The DVLA and DVLNI records identify the registered keeper of a vehicle, but this concept is poorly defined and based on a system of uncorroborated self-declaration; there is no reason why the registered keeper should be the regular user of the vehicle and in many cases will be a corporate body such as a leasing company or fleet operator who may be distant from the day-to-day use of the vehicle. It will therefore be necessary for each vehicle to be registered with a charging authority in the name of an individual or organisation who will have a legal obligation to meet the charge.
- G.15** A key issue will be the process that applies when vehicles change hands, or which govern changes of address or other relevant details. DVLA currently issues 10 million vehicle registration documents per year, of which about 2 million relate to first registrations. Under current legislation, the seller of the vehicle is responsible for notifying DVLA of disposal, of the identity of the new keeper and remains liable for taxing the vehicle until the Agency is notified of the change. A charging scheme will need to place a similar obligation to pay the charge on a keeper until the charging authority is notified that the vehicle has been disposed of; there may be scope for linking these processes, it is important to note that a change of user does not necessarily imply a change of keeper. A charging authority may also need to conduct

checks such as credit checks or proof of entitlement to exemptions or reductions that are not currently required by DVLA.

- G.16** Related to these questions is that of the transfer of on-board equipment. Depending on the nature of a charging scheme, the equipment may remain with the vehicle or – in the case, for example, of a microwave tag – may remain with the charge-payer. The mechanisms for notifying the charging authority of a change in vehicle will need to reflect that requirement and will need to run alongside processes for the physical handing-over of equipment.
- G.17** In all these transactions, the logic of defaulting to compliance is that responsibility for paying the charge should rest with the person disposing of the vehicle until declarations are properly made to the charging authority that the vehicle has been sold, stolen or otherwise disposed of. This reflects the logic of recent changes to the vehicle registration and licensing system. Roadside enforcement – probably using ANPR – would need to track vehicles where the identity of the new charge-payer was not clear (e.g. stolen vehicles), although there may be a need to stop the vehicle to identify the new keeper.
- G.18** There is currently a problem of vehicles that have fallen out of the vehicle registration system, as a result of being traded in an informal market without completing statutory processes. This figure could be as large as 1 million, although DVLA now has a target of reducing this figure by 50 per cent by 2007 by a combination of improved vehicle registration processes and enhanced enforcement involving both ANPR and immobilisation. Such vehicles would need to be brought inside the system; one benefit of a charging system is that, if operated efficiently, it could make such vehicles easier to track and thus reduce the incentive to evade.
- G.19** In particular, DVLA's enforcement efforts have been hampered by the difficulties of establishing that the person on the vehicle register is in fact the current keeper. It is common for those accused of licensing offences to claim that they have recently sold the vehicle; while the system of dual notification of change of transfer means that both buyer and seller are required to notify, there are still some 4 million vehicles with pre-dual notification vehicle registration documents requiring only the buyer to notify DVLA of the transfer. Although the reissue of all registration documents during 2004-5 will ensure that within a little over a year all registration documents will require both parties to notify, there remains the problem that case law (*R v Davis*) establishes that it is a sufficient defence for a keeper accused of a licensing offence to claim that they have posted the papers to DVLA (DVLA has recently begun to issue receipts to those notifying changes of keeper but the impact of these of receipts when changes of keeper are notified is untested in the courts). While the experience of TfL suggests that this has not been an issue for their enforcement, it does point to the importance of clamping and removal – which do not involve arguments about keepership – as an effective sanction. Primary legislation establishing a charging system may also provide an opportunity to clarify this issue.
- G.20** There is a further issue of establishing the user of a vehicle which is owned by a corporate body. Section 172 of the Road Traffic Act requires that the keeper of a vehicle should disclose the identity of the user of a vehicle to the police, but adds a statutory defence for corporate bodies that they need only do so where it would have been reasonable to keep a record. While this defence ensures that corporate keepers are not liable in circumstances over which they have no control – for example, where a vehicle is stolen – there is evidence that some organisations abuse this defence. Whether through the primary legislation needed to

introduce a charge or through voluntary agreements with the leasing and hire industry, a charging system will need to address this issue. However, a fleet account system should ensure that it is possible to get around this problem for the large majority of cases.

Installation of on-board equipment

- G.21** The installation and management of on-board equipment could present a major challenge, as discussed in Annex C. Any scheme will be dependent on the installation and verification of on-board equipment, and regular checks to ensure that it is working and compliant. A system based on DSRC would use a low-cost, easily-installed and free-standing tag, while one based on GNSS would require more expensive and sophisticated equipment wired into the vehicle electrics – which, were they to be retrofitted, would lead both to technical issues and questions of potential impacts on vehicle warranties. There may be particular questions arising from the fitting of sophisticated on-board equipment on motorcycles.
- G.22** Assurance that on-board equipment is working properly – and easy access to processes for repairing or replacing on-board equipment – is important. It is also important to ensure that charge-payers are incentivised to use equipment properly.
- G.23** The fact that on-board equipment will have value and its misuse could potentially allow a criminal to use the road under another user's identity means that security will be a key issue, especially if on-board equipment can easily be removed.

Ensuring ease of payment

- G.24** Payment services should aim to ensure that all those liable to pay a charge are aware of what they are expected to pay, and that it is as easy as possible for them to do so. Where charge-payers are part of a regular scheme, it is expected that this will be handled relatively easily through regular billing and registration on-line, although payment arrangements will need to reflect the fact that not all users will be willing or able to use credit cards or direct debit.
- G.25** For regular users, there is great potential for charging schemes to dovetail with other initiatives being undertaken by the Driver and Vehicle Operator Group of the Department for Transport to create common motoring portals through which motorists will, for example, be able to tax their vehicles or notify DVLA of changes of address on-line. DVLA's Electronic Vehicle Licensing project, allowing relicensing on line or over the telephone, is currently being rolled out; it will include on-line verification of insurance and eventually MOT status and could account for 30 to 50 per cent of licensing transactions. More specifically, it is currently envisaged that there will be a single 'consumer portal' through which the motorist will be able to access the full range of driver and vehicle transactions; the portal will be integrated with the Government-wide 'DirectGov' web facility. Business users will have a commercial user portal. It seems essential that developments like electronic vehicle identification and MOT computerisation, based on the availability of a virtual vehicle database, should form the basis of a system that enables charge-payers to pay on-line, and to verify that such payments have been made.
- G.26** Charge-payers using an occasional user scheme will need both to understand the requirements of the scheme and to make payments through a wide range of outlets. While the split between regular and occasional users will inevitably vary according to the nature of the

scheme, the experience in London is that 39 per cent of payment transactions involved a charge-payer providing a customer number while 61 per cent involved no previous customer number.

G.27 The London Congestion Charge has shown the following split of payment channels²:

Figure G1: London Congestion Charge payments by outlet	
Retail outlets	35 per cent
Internet	26 per cent
Call centre	19 per cent (6 per cent use automated payment system)
Mobile phone text messaging	20 per cent
Post	<1 per cent

G.28 This pattern remained reasonably constant during the first year of operation, suggesting that there will always be a need for low-technology retail-based outlets for occasional users.

G.29 Payment services will be an important issue for fleet operators. The fleet sector – both contract hire and short-term rental – handles some 10 million transactions per year and the average short-term rental is five days. It will therefore be important to establish a fleet account system that allows fleet managers to deal direct with the charging authority and to recover charges from the hirer. Such an arrangement would significantly reduce compliance costs for the fleet sector, as well as bureaucracy for the charging authority, and would make enforcement easier.

Managing exemptions and discounts

G.30 It is likely that any charging scheme will give rise to a range of exemptions and discounts. Regardless of who benefits, any system of exemptions will require the charging authority to carry out a range of functions, including the ability to identify and verify those who are exempt and to enforce against those who seek to abuse the system.

G.31 The existing VED system already contains a number of exemptions, many of which are long established. They include:

- Crown vehicles (13,000 vehicles)
- vehicles manufactured before 1 January 1973 not used for commercial purposes (320,000)
- vehicles used by the emergency services (45,000)
- vehicles used solely by or on behalf of those receiving Disability Living Allowance at the higher rate (950,000)
- agricultural vehicles (200,000)

- electric vehicles (10,000 – mostly milk floats)
- vehicles used for special purposes such as gritters, snow ploughs and mowing machines (15,000).

- G.32** It is not obvious that any of these categories would form the basis of exemption from charging, and if they did not it is unlikely that the charging authority could simply rely on the DVLA vehicle record to establish entitlement to exemption.
- G.33** TfL's London Congestion Charge exempts residents, blue badge holders, alternative fuel vehicles and motorcycles – the latter reflecting practical problems like the difficulty of reading motorcycle number plates using ANPR and the 25 per cent VED evasion rate among motorcyclists, resulting in difficulty in tracing the registered keeper. On a typical charging day in London, out of a total of around 110,000 payments the number of discounted vehicles travelling in the charging zone is about 14,000 residents' vehicles, 7,000 vehicles used by blue badge holders, and 3,000 other discounted vehicles.
- G.34** Locally-based schemes will need to take account of the need for residents' exemptions. Any such exemption raises questions of potential fraud. It will be necessary to verify that the user is actually resident at the address concerned. The DVLA vehicle register may be of limited value here. A vehicle owned by, for example, a company may be registered under a company name completely unconnected with that locality. An increasing number of vehicles are subject to leasing agreements, with the vehicle registered in the name of the leasing company or finance house. Furthermore, there is a risk of 'flagging-in' – the provision of name and address details by an individual of a family member or friend in the charging area to DVLA. A separate system to demonstrate residency will be required. The London scheme has been able to build its processes for exempting residents on well-established and rigorous schemes governing residents' parking; other charging schemes may need to invent exemption procedures from scratch. More generally, it may be necessary to strengthen further the procedures that are being developed at DVLA to better identify the keepers of vehicles.
- G.35** In general, it needs to be recognised that any decision to exempt vehicles is likely to create a loophole that will be abused; it will also create cases at the margin that are difficult to resolve. Existing experience also suggests that exemptions will need to be vehicle-based; experience of operating VED exemptions has shown that those revolving around a journey purpose will be unenforceable.

Enforcement

- G.36** Any charging scheme will need a system of enforcement to deal with non-compliant behaviour by road users. This is likely to take one of three forms:
- failure to pay by users who are already registered with the charging authority
 - attempt by road users to provide fraudulent information about their identity or entitlement to exemption or discount
 - driving in a charging area without having made arrangements to pay.
- G.37** The first of these is likely to be dealt with as a civil debt by the charging authority, although the precise nature of recovery may partly depend on whether the revenue from the charge is classified as a tax or a charge.

- G.38** Enforcement against the non-payer or the person who seeks to defraud the system will involve a range of processes designed to identify the offender, to demonstrate that an offence has taken place and to apply the appropriate sanction.
- G.39** Enforcement is inevitably costly, and the greater the extent to which it is pursued, the lower the marginal returns. In most circumstances, enforcement authorities will be faced with decisions about how far to pursue cases where there is little prospect of recovering the cost of enforcement, although to do so will increase the deterrent effect. Thus there is a trade-off between evasion rates, the cost of enforcement and the likelihood of detection.
- G.40** Transport for London's system for enforcing the London Congestion Charge involves the issue of Penalty Charge Notices (PCNs) of £80, reduced to £40 if paid within 14 days, where a check of a camera image of a registration mark shows that no charge has been paid. The TfL penalty system has seen a steady increase in the level of compliance with penalty notices. It currently issues about 165,000 PCNs per month, of which 70 per cent are paid with an average yield of £48.50; TfL believes that this level of compliance will increase as potential evaders realise that unpaid PCNs will be actively pursued. The proportion of PCNs against which representations are made has fallen from 64 per cent in the early weeks of the Charge to about 22 per cent, reflecting familiarity with the Charge and improved processes. The majority of representations now being received relate to hire vehicles.
- G.41** By January 2004 some 53,000 warrants of execution had been passed to bailiffs following registration at the County Court, amounting to some 4 per cent of all PCNs issued. TfL is experiencing an increase in payment following warrants as the enforcement scheme continues to bite.
- G.42** In developing an efficient and cost-effective enforcement system there are a number of key constraints that must be recognised:
- *role of the police* – even assuming that evasion is to be treated as a criminal matter, it is not obvious that the police should play a lead role. Police time is expensive and operational deployment of police officers is the responsibility of Chief Constables, who, given the political and public pressure to deal with high-profile offences like burglary and street robbery, would not necessarily be prepared to guarantee levels of enforcement (although the experience of Operation Laser – in which the police target VED offences – has shown close links between vehicle licensing evasion and other crime). Government has no powers to direct Chief Constables to devote resources to enforcing a road charge (or any other aspect of crime) and to take such powers would represent a fundamental change to the relationship between central Government and the police. Since only Police Constables and, in future, VOSA Traffic Examiners have the right to stop vehicles, any significant use of roadside enforcement will either require the granting of powers to stop vehicles to the officers of the Charging Authority, or potentially expensive and cumbersome memoranda of agreements with the relevant Chief Constables

- *the role of the courts* – the need to process large numbers of criminal cases would cause an unacceptable burden on an already stretched Courts Service. Government policy is to develop enforcement processes that do not impose new cost burdens on the courts. The situation is exacerbated in Scotland by the ability of Procurators Fiscal to clear log-jams in the Sherrif's Court by dropping classes of case (as frequently happens with VED cases), which means that a charging authority in Scotland would have no control over the sanctions process. As a matter of principle, it is therefore important to develop systems of sanction that do not rely on the courts, except as a last resort.

- G.43** These constraints clearly point towards a bespoke system of penalties enforced by charging authorities.
- G.44** One important form of enforcement – which may offer a way around some issues of identifying users – is the taking of powers to clamp and impound non-compliant vehicles. Current powers in the Vehicle Excise and Registration Act 1994 allow the Secretary of State or his agent to immobilise (i.e. clamp) and impound unlicensed vehicles. DVLA's pilot schemes in Newham and Hastings have shown that a commitment by local authorities to take on DVLA powers to clamp and remove has led to a significant fall in VED evasion and – against the national trend – vehicle abandonment. A total of nineteen local authorities have now entered into agreements to use DVLA's wheelclamping and removal powers and a total of 55,000 vehicles were clamped during 2003. DVLA is working closely with the Association of London Government (ALG) to devolve clamping powers to all 33 London boroughs by October 2004. About half those vehicles impounded are never reclaimed and are eventually crushed, which means that there is a significant cost to any clamping scheme. But there are also benefits in terms of permanently removing from the roads vehicles that are untaxed, often uninsured and probably unroadworthy. In London, where TfL are building up the number of removals to around 90 in January, removal forms part of an intelligence-based strategy undertaken jointly with other enforcement agencies like the police, the boroughs and DVLA. Thus there is growing evidence that clamping and removal provide an effective system of enforcement and would bring wider benefits.
- G.45** DVLA's new system of continuous registration introduced from January 2004 a new system of penalty charges, under which the registered keeper of a vehicle will receive a penalty notice of £80 – reducing to £40 if paid within 14 days – if that vehicle is not taxed on time. The penalty charge will be enforced as a civil debt and is additional to the outstanding tax on the vehicle, enforcement of which remains a criminal matter. DVLA's initial advertising campaign led to up to 10,000 Statutory Off-Road Notification (SORN) declarations per week that a vehicle has been taken off the public road, reinforcing the view that purposeful enforcement will ensure compliance. It is currently gearing up the enforcement of penalty notices.

Privacy issues

- G.46** A road charging scheme inevitably involves the collection of data on vehicle movements in order to levy a charge. The amount of data to be gathered varies crucially with the nature of the scheme, but in the case of a national distance-charging scheme for all vehicles would involve collecting detailed data on all vehicle movements. The management and handling of such data inevitably gives rise to concerns about privacy.

- G.47** Privacy issues fall into two types: those relating to personal autonomy – the right of individuals to go about their daily lives without intrusive surveillance from public authorities; and those connected to information privacy – the right of individuals to have some control over the way information about themselves is used. Road charging potentially involves both types of data. It involves both the collection of data and its use for billing purposes, thus linking information on vehicle movements with individual citizens.
- G.48** The extent to which any particular scheme potentially threatens these rights to privacy is, broadly speaking, a function of its complexity and its extent. The extent to which this potential is realised or mitigated is a product of its architecture. Questions of business architecture are discussed in greater detail in Annex I.
- G.49** The greater the complexity of any road charging scheme, the greater the specificity of data that would need to be gathered about road use and the greater the sophistication of the equipment that would be needed to capture this data. The greater the data capture and sophistication of data collection equipment, the greater the likely intrusion into individual privacy.
- G.50** The greater the geographical extent of any road charging system, the greater the proportion of a vehicle's movements about which data would be collected. While tolling of motorways would be likely to involve only a small proportion of a vehicle's total road use, tolling of the entire road network would require extensive data about movements to be collected and stored for billing or enforcement purposes.
- G.51** The importance of privacy as an issue means that it will be at the forefront of policy making. But there are also legal safeguards for privacy which are likely to create specific requirements on any scheme. The two most important sources of these are the Human Rights Act (HRA) and Data Protection Act (DPA).

Human Rights Act 1998

- G.52** The Human Rights Act came into force on 2 October 2000. It enshrines the principal rights and freedoms ('the Convention rights') set out in the European Convention on Human Rights (ECHR) of 1950 in UK law by making it unlawful for a public authority to act in a way which is incompatible with Convention rights, unless, because of an Act of Parliament, it had no choice; establishing the principle that, if possible, all UK legislation should be given a meaning compatible with Convention rights; and allowing UK courts to hear cases alleging infringement of Convention (previously people had to go to the European Court of Human Rights in Strasbourg).
- G.53** Article 8 of the ECHR concerns privacy. The right to privacy is broadly drawn. Its fundamental point is that individuals have the right to live their own life with such personal privacy as is reasonable in a democratic society, taking into account the rights and freedoms of others. It consequently raises significant issues across a range of different areas, including:
- police searches of homes and the use of covert surveillance, such as listening devices
 - family law disputes, for example where there is a risk that the family will be separated
 - the rights of homosexuals and transsexuals
 - employees' rights to privacy, including the monitoring of e-mails and telephone calls

- the imposition of unreasonable mandatory dress codes or drug testing at work
- the use of CCTV and exchange of data obtained from it.

G.54 In the context of road charging, the most significant implication of Article 8 is that it limits the extent to which a public authority can gather and store information about individuals without their permission. Individuals have a right to have information about them, such as official records, photographs, letters, diaries and medical information, kept private and confidential and, unless there is a very good reason, public bodies should not collect or use information like this. However, in principle, interference with the right to privacy is permissible as long as it can be justified; a public authority can interfere with Article 8 rights if it can show that:

- the interference has a clear legal basis
- the aim of the interference is national security, public safety, protection of the economy, prevention of crime, the protection of health or morals or the protection of the rights and freedoms of others
- it is necessary (as distinct from reasonable) to interfere with people's rights for one of the permitted reasons
- the interference is proportionate, going only so far as was required to meet the aim.

G.55 The HRA does not therefore appear to prevent or impede the collection of the data needed for road charging. But it does mean that appropriate powers would be required to do so (probably through primary legislation) and that charging authorities would need to ensure that they only collected data on vehicle movements that was needed to administer and enforce the charge, and that any subsequent disclosures could be justified.

Data Protection Act

G.56 The Data Protection Act 1998 came into force in 2000, giving effect in UK law to EC Directive 95/46/EC and replacing the Data Protection Act 1994. It imposes strict controls on the storage and use of computerised personal data and personal data held in structured manual files.

G.57 The Act obliges data controllers to comply with the eight key Data Protection principles. In summary these are to:

- process data fairly and lawfully
- obtain personal data only for one or more specified and lawful purposes and ensure that such data is not processed in a manner incompatible with the purpose or purposes for which it was obtained
- ensure that personal data is adequate, relevant and not excessive for the purpose or purposes for which it was obtained
- ensure that personal data is accurate
- ensure that personal data is not kept for any longer than necessary for the purpose for which it was obtained
- process personal data in accordance with the rights of the individuals to whom it relates
- ensure that personal data is kept secure and

- ensure that personal data is not transferred to a country outside the European Economic Area unless the country to which the information is to be sent ensures an adequate level of protection for the rights (in relation to the information) of the individuals to whom the personal data relates.

G.58 These principles will clearly impact on how charging is delivered, and on how the management authority collects, processes and stores data. In particular:

- **the enabling legislation setting up road charging will need to address DPA issues.** Consideration would need to be given to the extent of data sharing with other organisations such as the police. Routine sharing would need a power to disclose enshrined in the enabling legislation. It would be desirable to establish a statutory code of practice governing handling and storage of information. Any road charging scheme will need to develop, in negotiation with the Information Commissioner, protocols to govern issues such as how long data can be stored
- **the structure of road charging will also need to take DPA into account.** For instance, the principle that “personal data is adequate, relevant and not excessive for the purpose or purposes for which it is held” means that the exchange of data between roadside and charging operations will need to be carefully controlled. In principle, the authorities which collect data at the roadside (Highways Agency, local authorities etc) have no need to actually know the identity of the users passing through their charge points – all they need to know is the vehicle registration mark or On-Board Unit (OBU) number. By the same token, the authorities which process charges and bill road users for them have no need to know where a user has actually travelled (unless a user specifically requested bills with this level of detail). The ‘adequate, relevant and not excessive’ principle might be inferred to imply that this separation of powers should be built into the scheme
- **the interaction between any road charging scheme and other organisations will be affected by DPA.** Interfaces between the charging authority and other public bodies will need to be managed carefully. The principle that personal data should not be transferred to countries outside the European Union unless they ensure an adequate level of protection would also apply. This might complicate pursuing enforcement cases against drivers of foreign registered vehicles.

What does this mean in practice?

G.59 The precise nature of the information to be collected and held on vehicle movements will depend on the characteristics of the scheme. However, as a matter of general principle, the most significant privacy issues arise not from the fact that a charging scheme could result in the creation of a record of a vehicle’s movements but from the fact that this record could be linked to an individual and used to produce a record of that individual’s movements – in other words, when that information becomes personal.

G.60 The link between the vehicle and the individual provides a starting point for enforcement. However, the generality of users who comply with charging requirements should be entitled to expect that their vehicle movements would not be monitored in any other than an impersonal way and that no person at the charging authority should be able to link vehicle movements with named individuals.

G.61 There are two main ways to achieve this: on-board payment or data clearance. On-board payment implies that the charge is collected directly as movements occur, with no further action required. Data clearance prevents the record of movements being tied to an individual because it interposes a third party between the body collecting information on road use and the body responsible for payment.

On-board payment

G.62 This is, in essence, a payment device linked to the on-board unit. For example, it could take the form of a token-based approach – in which a payment device accepting tokens is attached to the on-board unit, which would default to off-board payment once the stock of tokens was exhausted. The disadvantage of such an approach is its vulnerability to fraud and the cost of administering a set of outlets for token sales. A smartcard-based approach could provide a more robust alternative.

G.63 This approach would offer considerable protection to the user's privacy. Information would still need to be collected from the on-board unit, as a precaution against fraud, but it would only be necessary to access this information where potential fraud was detected.

G.64 Technical limitations would make such a system difficult to operate with DSRC systems. A smartcard carrying electronic cash would need highly specific security protocols, which take time to complete, while the time taken for a normal DSRC transaction to occur when a tag is read by a beacon will typically be fractions of a second (depending on the speed of the vehicle and the availability of roadside equipment). The time for the transaction is less critical for GNSS technologies, allowing financial security mechanisms to be used to access account data. A common card that could be used for public transport could allow the opportunity for shared payment and back-office functions.

The Data Clearing Operator model

G.65 An alternative to on-board payment would be to establish processes which would prevent the linking of vehicle movement records to individuals. The charging of individuals for road use requires two main operations; collecting data about road use and converting this information into a bill. There is no particular reason why these functions should be carried out by the same operator. The DfT business model provides explicitly for user privacy by contracting these roles out to separate bodies and creating a third body that would sit between them.

G.66 The model – which is discussed in greater depth in Annex I – contains an On Road Services Provider (ORSP) which would conduct roadside data capture, either using microwave transceivers or ANPR, of essentially anonymous data; a Payment Services Provider (PSP) linking charges to individual users and issuing bills or, in the case of non-compliance, tracing keepers and issuing penalty notices, but without any need to know where that user had actually travelled; and a Data Clearing Operator (DCO) sitting between these two types of organisation that would strip out the location-related information and pass the vehicle/account charge to the relevant PSP without specifying where or when the transactions occurred (unless the charge-payer explicitly requested itemised bills).

G.67 Either of these models could ensure that a charging scheme provides adequate protection for charge-payers' privacy, although the latter fits better with the current state of technology.