

Code of Practice

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Traffic Management Act 2004

Code of Practice for Permits



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FOREWORD

This Code of Practice provides guidance intended to help a common approach to the operation of permit schemes. It follows the regulations and statutory guidance but goes beyond that in places, building on discussions in the Permits Working Group (who comprise of representatives from The Department for Transport, National Joint Utilities Group and local highway authorities) often paralleling the notices regime arrangements.

However the details of permit schemes will be in their individual Order. This Code may need revising in the light of experience once schemes have been operating.

1. INTRODUCTION

Permit schemes provide a new way to manage activities in the public highway. They were introduced by Part 3 of the Traffic Management Act 2004 (TMA) to improve authorities' abilities to minimise disruption from street and highway works.

Permit schemes provide an alternative to the 'notification system' of the New Roads and Street Works Act 1991 (NRSWA). Instead of informing a street authority about its intention to carry out works in the area, a utility company would need to book time on the highway through a permit as would a highway authority for its own works.

At least initially, it is likely that both systems will operate in different areas. To reduce confusion and to ensure consistency and better co-ordination, categorisations from key areas of the notice system have been carried over to the permits system. These include road and works categories for example.

1.1 Activities

'Activities', rather than 'works', is the generic term used in connection with permit schemes. This reflects the fact that schemes may eventually encompass more than street and highway works. Whilst the first set of permit regulations covers only those two types of activity, it is intended to extend the scope of permit schemes in subsequent regulations.

For the present Code of Practice activities are defined in regulations as including:

- street works as in Part 3 of NRSWA, except for works by licensees under section 50 of NRSWA;
- works for road purposes as defined by section 86 of NRSWA .

1.2 Permit Schemes

A permit scheme can be operated by a 'permit authority'. Usually, this would be the highway authority for the streets concerned but it could cover several authorities operating together. Authorities are not obliged to run a permit scheme. They must apply to the Secretary of State if they wish to run a scheme on all, or some, of their roads.

1.2.1 Scheme Orders

Permit schemes are established individually by an Order, in the form of a Statutory Instrument, made by the Secretary of State. The Order contains all the details of the individual scheme including those elements which are required by regulations.

The Secretary of State can amend the proposed permit scheme, however this should not normally be necessary if the applicant authority follows the Statutory Guidance published under section 33 (5) (b) of the TMA and the guidance contained in this Code of Practice.

1.2.2 Differences from NRSWA

Permit schemes differ from existing powers for managing activities on the street in a

number of key respects:

- rather than informing the authority of the promoters' intentions, they may be envisaged as schemes to book occupation of the street for specified periods and for a specified purpose
- highway authorities' own works are included
- conditions which impose constraints on the dates and times of activities and the way that work is carried out can be attached to permits
- the authority's control over variations to the permit conditions, particularly time extensions, gives a greater incentive to complete activities on time.

Permit schemes will replace parts of NRSWA, particularly the notices related to section 54 (advanced notice of certain works), section 55 (notice of start of works) and section 57 (notice of emergency works). Many elements of NRSWA will continue alongside permit schemes, in some cases amended to operate effectively with permits.

Where necessary, activity promoters must also submit any notices required by those sections of NRSWA not disapplied in the permit regulations. Details of these can be found in the *Co-ordination Code of Practice*¹ and *Notices Regulations 2007*².

1.2.3 Highway authority activities

Under a permit scheme the highway authority's activities will be treated in exactly the same way with regard to co-ordination and the setting of conditions.

Authorities will need to ensure sufficient separation between those operating the permit scheme and those responsible for highway activities so that parity of treatment is evident. In many authorities the Traffic Manager (designated as required by section 17 of the TMA) may be separated from the highway activities.

A set of Key Performance Indicators (KPIs) have been developed so that permit authorities can show that they are operating the scheme in a fair and equitable way. Authorities will be required to report against these and this will feed into the assessment of an authority's performance of its Network Management Duty. The KPIs can be found in Chapter 20.

1.3 Statutory Background

Prior to the TMA, activities in the highway have been subject to the provisions in various statutes, in particular NRSWA for utility street works, and the Highways Act 1980 and Road Traffic Regulation Act 1984 for works by highway and traffic authorities.

Section 59 of NRSWA places a duty on the street authority to co-ordinate works of all kinds on the highway. Equally important is the parallel duty on undertakers to co-operate in this process (section 60). The TMA and the associated regulations widen the section 59 co-ordination duty to include other prescribed activities that involve temporary occupation or use of road space. That will incorporate any activities included in a permit scheme.

¹ *Code of Practice for the Co-ordination of Street Works and Works for Road purposes and related matters 3rd edition 2007*

² *The Street Works (registers, Notices, Directions and Designations) (England) regulations 2007 SI [X], No [x]*

1.3.1 Traffic Authorities - network management duty

Section 16 of the TMA introduced a network management duty (NMD) on traffic authorities. The statutory guidance on the NMD refers to the management of street works and highways works, and other activities on the highway, as one aspect of the duty.

The NMD requires local traffic authorities, usually the local highway authorities, to manage their road network to achieve - as far as may be reasonably practicable having regard to their other obligations, policies and objectives - the following objectives:

- (a) securing the expeditious movement of traffic on the authority's road network; and,
- (b) facilitating the expeditious movement of traffic on road networks for which another authority is the traffic authority.

This may involve exercising any power to regulate or co-ordinate the use of any road, or part of road, in the road network (whether or not the power was conferred in their capacity as a traffic authority).

Under the NMD, local traffic authorities must establish processes, as far as reasonably practical, to ensure that they:

- (a) identify causes, or potential causes, of road congestion or other disruption to the movement of traffic on their road network; and,
- (b) consider any possible action that could be taken in response to or in anticipation of such causes.

These processes should cover a wide range of activities, such as identifying and managing different roads or classes of roads, monitoring the road network and the co-ordination and direction of works - which includes the management of an authority's own works for road purposes.

However, there is no requirement to identify or consider anything that appears to have only an insignificant effect on the movement of traffic.

1.3.2 Intervention Notices and Orders

Under the TMA, the Secretary of State has the power to intervene through an 'Intervention Notice' or 'Intervention Order' if he considers that a local traffic authority may be, or is, failing to perform any of its network management duties.

A guidance document, *The Traffic Management (Guidance on Intervention Criteria) (England) Order 2007*³ sets out what the Secretary of State would take into account in determining whether or not a local traffic authority is performing its network management duties. This includes:

- (a) co-ordinating and planning works and known events; and,
- (b) ensuring parity with others, by applying the same standard or approaches to an authority's own works as to those of other works promoters.

³ *The Traffic Management (Guidance on Intervention Criteria) (England) Order 2007* SI 2007 339 ISBN 978-0-11-075792-6

1.3.3 Other legislation

As well as the powers contained in NRSWA and the TMA, the authority has a wide range of powers through other legislation such as the Highways Act 1980 and the Road Traffic Regulation Act 1984. It may also have powers granted by local acts, particularly in London.

There are additional duties on local authorities, for instance Part III of the Disability Discrimination Act 1995 (DDA), amended by the DDA 2005, gives disabled people a right of access to goods, facilities, services and premises. By providing integrated and accessible transport and a barrier-free pedestrian environment, local traffic and highway authorities will deliver this right and fulfil their obligations.

1.3.4 Undertakers – statutory obligations

The local authority duties above must be balanced against the statutory obligations of statutory undertakers. Statutory undertakers, or those in possession of a street works licence (under section 50 of NRSWA), have a legal right to carry out street works. Statutory undertakers are generally those companies that supply water, gas, electricity and telecommunications or control sewerage, but there are a few less obvious ones, for example London Underground, which may need access to equipment for communications or power.

The utility companies have statutory obligations to provide a supply or service, and these are closely monitored by the utility regulators, OFWAT (water industry), OFGEM (gas and electricity industries) and OFCOM (communications industry), to ensure that the required level of service is maintained. This will include restoring supply, as well as ensuring new customers are connected within certain time frames. Under legislation, customers of the electricity, gas or water companies, subject to certain exemptions, may be entitled to compensation if a company fails to meet these guaranteed standards of performance⁴.

The operators of a gas network also have obligations under regulations enforced by the Health and Safety Executive⁵. These require operators of gas networks to carry out certain works within a specific time or to replace certain types of apparatus within a specified period. Currently, the gas industry has a programme to replace all metal apparatus within 30 metres of properties, over 30 years, from 2001, with highest priority given to that apparatus at greatest risk, based on an agreed safety case to assess priorities. The priorities may change to reflect an escalation of risk based on either new information about specific types of pipes or apparatus, or as result of incidents involving a specific pipe.

1.4 Code of Practice

This Code is intended to help permit authorities to carry out their duty to co-ordinate all activities in the highway and promoters to co-operate with them in that process.

It is important that authorities and promoters work closely together. None of the provisions of this Code and its accompanying legislation can be achieved without the commitment of all concerned:

⁴ The Electricity (Standards of Performance) Regulations 2001 (as amended), the Gas (Standards of Performance) Regulations 2005 (as amended) and the Water Supply and Sewerage Services (Customer Service Standards) Regulations 1989 (as amended).

⁵ Gas Safety (Installation and Use) Regulations 1998 SI 2451 and Gas Safety (Management) Regulations 1996 SI 551

- to ensure that the information provided and given with respect to all the requirements in this Code is up to date, timely and correct, including all permit applications, permit variations and permits issued; and,
- to act reasonably in the decisions and actions taken (the extent to which parties have done so would be a factor in resolving any subsequent dispute).

Promoters and authorities are both subject to legal requirements in the primary legislation and regulations. Permit authorities must also take the Statutory Guidance into account in preparing permit schemes. The remainder of the Code contains further guidance for all parties on their involvement in the preparation and operation of permit schemes.

This code is intended to assist the process of co-ordination between utilities and authorities. A reasonableness test needs to be applied at all times.

It should be read in conjunction with the *Technical specification for EToN*.

NRSWA, the TMA and other relevant regulations must also be consulted along with other relevant Codes of Practice and guidance, including:

- ***the Network Management Duty Guidance* published under TMA;**
and,
- ***the Guidance on Intervention Criteria*, published under the TMA.**

2. PERMITS AND CO-ORDINATION

2.1 Introduction

All works and activities reduce the width of the street available to traffic, pedestrians and other users. They can also inconvenience businesses and local residents.

The scale of disruption caused by this restriction will depend on the type of activity and how busy the street is. Works where the traffic flow is close to, or exceeds, the physical capacity of the street will clearly cause disruption. And even though small-scale works in a non traffic-sensitive street might bring only minimal disruption to residents and delivery vehicles, the nuisance they cause could still be an issue for residents.

Effective co-ordination is therefore essential to minimise traffic disruption whilst allowing activity promoters the necessary time and space to complete their work. It is not intended to prevent activities necessary for the maintenance and improvement of the road network or the services running underneath it or the adjacent buildings.

The fundamental objective of permit schemes is to create a common procedure which will allow local authorities to better manage activities on the network that may cause disruption. They provide a set of powers that give greater control over a wider set of activities. Permit schemes require authorities to treat all activity promoters equally and encourage all promoters to amend any current practices that create avoidable disruption.

2.2 Co-ordinating and Managing Permit Activities

2.2.1 Objectives

Co-ordination enables differences between those competing for space or time in the street, including traffic, to be resolved in a positive and constructive way. The TMA broadens the co-ordination and co-operation duties under NRSWA. Permit schemes are intended to enable more effective co-ordination but the objectives remain the same:

- to ensure safety
- to minimise inconvenience to people using a street, including a specific reference to people with a disability
- to protect the structure of the street and the integrity of apparatus in it.

Although permit conditions can give the authority greater influence over how and when activities are carried out, the prime responsibility for planning, supervising and carrying out individual activities falls on the promoters. It is essential that everyone involved in highway activities takes both the co-ordination objectives and the broader TMA objective of expediting the movement of traffic into account.

2.2.2 Outcomes

The needs of all road users, including those with disabilities - whether they are pedestrians, equestrians, cyclists or motorists – should be considered throughout the planning and execution of activities. This has implications for:

- the timing of activities

- the way in which they are carried out; and,
- the programming of activities.

Permit schemes should be operated in a way that encourages better planning, scheduling and management of activities so that they will not cause avoidable traffic disruption. An objective method to calculate disruption is described in section 19.7 and Appendix G.

The provisions of sections 58 and 58A of NRSWA - see Chapter 8 - operating alongside permits, should also ensure that, again except in unavoidable circumstances:

- recently resurfaced or reconstructed streets will not be affected by activities subject to permits; and,
- activities in the same street are not carried out within a short time of each other.

2.2.3 The process

The co-ordination process has four phases:

- (a) Information: The authority needs accurate and timely information on what is proposed and when it is happening
- (b) Analysis: The authority needs a means of assimilating and analysing this information
- (c) Consideration: The authority must consider whether any changes are required to minimise disruption before it agrees to the proposals
- (d) Co-operation: All parties must co-operate with the authority to achieve the minimum disruption.

2.3 Principles

To meet the objectives and outcomes outlined above activity promoters and permit authorities must adhere to three key principles:

- the need to balance the potentially conflicting interests of road users and activity promoters' customers
- the importance of close co-operation and liaison between permit authorities and activity promoters; and,
- an acknowledgement that activity programmes and practices may have to be adjusted to ensure that the statutory objectives of the co-ordination provisions are achieved.

2.4 Information

Successful co-ordination requires accurate and timely information, and good communication between permit authorities and activity promoters.

2.4.1 Timing

A basic principle when applying for a permit is: the greater the likely disruption the sooner the application should be made. Authorities need time to consider the implications of an activity.

Promoters should recognise that statutory application periods are a minimum and whenever possible longer periods should be given. This benefits both the permit authority and the promoter - if modifications are required, the earlier the authority informs the promoter, the easier it will be for them to comply. If there are no objections to a promoter proceeding before the end of the full prescribed application period consent should be given to an early start. See 10.15

A permit authority can request early warning of immediate activities on streets it has designated on the ASD as vulnerable to traffic disruption. In these cases, the promoter should ring the authority's specified number as soon as activities become necessary or, at the latest, as soon as they begin.

2.4.2 Other considerations

Activity promoters should be prepared to discuss their proposals with other interested parties, including frontagers, and to modify them where it is appropriate and practicable.

Promoters should take into account the space needed for both the works and the storage of plant or materials when assessing the likely disruption an activity might cause.

Small scale and short duration activities, particularly in non-traffic-sensitive situations, are unlikely to cause significant disruption. However, a cluster of such activities close to larger works could cause serious disruption. Effective co-ordination therefore needs to take into account proposals of every scale and duration.

2.5 Co-ordination Machinery

In some cases the permit authority and activity promoters will be able to co-ordinate effectively on a one-to-one basis. However, for the most part, regular meetings of dedicated groups will be needed and the Regional HAUCs and local co-ordination meetings provide the means to do this.

2.5.1 Principles

The key principles to follow if co-ordination machinery is to work effectively are:

- the sharing of information and consultation between interested parties at the earliest opportunity
- regular input and attendance of relevant people (those empowered to take decisions) at co-ordination meetings
- activity promoters and authorities sharing business development plans and replacement programmes for apparatus and highway assets with the co-ordinating authority
- communication of decisions at the earliest opportunity so that promoters plans can be adapted, if necessary
- cross-boundary co-ordination between neighbouring authorities, utilities, and others, especially for all planned works and planned maintenance on strategic routes.

2.5.2 Regional HAUCs

At a regional level, the meetings should be set up under the aegis of regional Highway Authorities & Utilities Committees (HAUCs). Principal issues will be policy determination within national HAUC guidelines; monitoring the effectiveness of local co-ordination arrangements; and providing policy guidance on a local basis. They should also facilitate local dispute resolution procedures. If the parties wish, performance reviews could also be carried out at these meetings.

2.5.3 Local co-ordination

At a local level, these groups should be organised and chaired by the Traffic Manager (or a nominated deputy) of the relevant permit authority. They may be convened at an area level (e.g. County level) if appropriate, but wherever possible, the groups should be based on a highway authority's managed area and include other relevant permit authorities. The meetings will be concerned primarily with direct co-ordination of individual schemes and dissemination of information.

Local groups should meet quarterly or more frequently if the need arises, but a discussion should always take place whenever proposed major activities are likely to conflict with other activities, especially in a street or streets known to be prone to congestion. Meetings should cover:

- specific major activities with, wherever possible, fully-costed and assessed alternative routes for activity proposals and a full assessment of the preferred route
- medium-term and annual programmes for all activity promoters, submitted at least 21 days before the meeting, and showing a six-month rolling programme of work. This will allow the permit authority to compile a co-ordinated schedule of activities.
- planned road closures for the next quarter and rolling year ahead, to allow all activities to be planned within such closures as far as possible
- other significant events.

The following topics may also be covered, if they do not conflict with the main aim of the meeting:

- local policies and strategies affecting street works, traffic management proposals (including the effect of diversionary routes), and the potential for reducing disruption from activities through common schemes/trench sharing etc
- proposed designations of streets subject to special controls and other constraints
- reviews of performance at local level, including damage prevention
- feedback from HAUC(UK)
- street works licences
- any joint forward advertisement of activities where major traffic disruption is likely.

Representatives from all major interests should attend each meeting. This includes all promoters and the Highways Agency if there are motorways or trunk roads within the area. The representatives should be well enough informed to discuss major projects, individual proposals and medium-term and annual programmes that are relevant to them and should have delegated responsibility to take decisions.

2.5.4 Liaison with other bodies

Permit authorities should liaise with adjacent authorities if activities are likely to affect traffic flows across boundaries and/or trunk roads. They should also provide information to other bodies likely to have an interest, such as:

- the police, fire, ambulance and other emergency services
- public transport operators
- other appropriate bodies, e.g. organisations representing disabled people, pedestrians, motorists, and cyclists
- the appropriate planning and environmental health officers.

2.6 Analysis

Local co-ordination meetings are valuable for sharing information and enabling all parties to understand each others' difficulties and constraints. But they cannot be in permanent session and realistically they can cover only major programmes and proposals with relatively long lead times.

2.6.1 Technology

The day-to-day co-ordination of the majority of proposals can be achieved only through the use of technology, especially given the relatively short lead times for minor and standard works. This is particularly so for permit and notice management systems that use GIS.

Permit applications should include locations by means of grid references (NGRs). This together with the use of the nationally consistent street gazetteer means that authorities should be able to visualise the impact of different activities on their networks and the interaction between these activities.

To increase the benefit of these changes, street authorities should request that NGRs are also given on other relevant documents, such as applications for skips or scaffolding on the highway.

2.7 Consideration

Permit authorities must consider all aspects of the proposed activities and other influences that may affect traffic, these include:

- the road network capacity
- the scope for collaborative working arrangements, including trench and duct sharing between promoters
- the optimum timing of activities from all aspects
- the effect on traffic, in particular, the need for temporary traffic restrictions or prohibitions
- appropriate techniques and arrangements particularly at difficult road junctions and pinch points

- the working arrangements required in protected and traffic-sensitive streets, and streets with special engineering difficulties
- the effect of skip and scaffold licences, any known special events and other licences or consents issued in respect of affected streets under the Highways Act 1980
- developments for which planning permission has been granted on streets affected by the works.

2.8 Co-operation

The primary aim of section 59 is for the authority to co-ordinate works in the street with the active co-operation of all parties concerned. Activity promoters proposing to work in the street have a statutory duty to co-operate with the authority under section 60 of NRSWA. In addition, under section 68 undertakers must provide authorities with the facilities to ascertain compliance. Failure to comply with section 60 or section 68 may constitute a criminal offence.

An authority should discuss any difficulties that the proposed activities cause with the promoter and agree an acceptable way forward. However, safety concerns, urgency or lack of co-operation, may make it necessary for the authority to so condition the permit to make sure that the work is carried out in such a way as to minimise disruption and inconvenience.

2.9 Forward Planning of Activities

2.9.1 Forward planning information

Forward planning information on long-term programmes from all activity promoters will help permit authorities to co-ordinate activities. It will also help promoters to identify opportunities for joint working and to co-ordinate the timing of resurfacing. This might include mains replacement programmes or the reconstruction of main roads, which will be planned several years ahead.

Activity promoters should give forward planning information about road or street works in their long-term programme, which may include those works in their annual operating programme, or three or five-year rolling programmes. This forward planning information could also include works identified through asset condition surveys. It could be provided at any time before an application for a Provisional Advance Authorisation is required.

It is much easier to adjust the timing of medium and long-term programmes to co-ordinate with the plans of other activity promoters than short-term programmes with detailed plans when contractual commitments may have been made. While accurate information is important, it is accepted that the longer the lead time the greater the uncertainty about timing.

2.9.2 Recording information

It is essential that information on large-scale or potentially very disruptive activities is included in the permits register at the earliest opportunity (in either a separate section or flagged as forward planning). This will enable activity promoters to:

- take part in early co-ordination

- consider joint working
- consider trench sharing
- highlight other activities which need to be co-ordinated with these activities
- produce reports for activity co-ordinators.

The entry should give as much detail as possible. The minimum information needed is the street involved, the nature of the activity and the proposed dates - which may be just a calendar year. This information should be reviewed and updated regularly to include details as they are finalised. Forward planning information does not remove the need to apply for a Provisional Advance Authorisation or a permit at the appropriate time.

2.9.3 Entering information into the register

It is the permit authority's responsibility to enter forward planning information into the relevant section of the register. This will be made available alongside other information in the register.

Promoters should send forward planning information about works electronically using the format in Table 1 below. Information should be provided in the order shown. The permit authority may need to reorder data before converting it for entry into the register. The six-digit grid reference number is important for providing reasonably accurate information about the location of activities.

| Table 1. Spreadsheet contents for forward planning information about activities on the highway | |
|---|--|
| | Guidance notes. (Do not include guidance notes in spreadsheet) |
| Permit authority | |
| Operational district | |
| Activity promoter | |
| Date of last update | If applicable |
| Activity promoters reference | If applicable |
| Town | |
| Locality | |
| USRN | |
| Street name | |
| Road number* | Road classification number |
| Grid reference (Easting) | Approximately the centre point of the proposed works |
| Grid reference (Northing) | Approximately the centre point of the proposed works |
| Activity promoter contact name | Name of person who can answer queries regarding the activity. |
| Activity promoter contact number | Telephone number of above |
| Activity description | |
| Activity position | When known. Carriageway = C. Footway = F. Verge = V. |
| Traffic management type | When known |
| Length of activity | When known |

| | |
|---|------------|
| Width of activity | When known |
| Notes | |
| *Road classification provides activity co-ordinators with information on a route basis. | |

An EToN transaction has been developed for sending forward planning information - this can be found in the Technical Specification for EToN.

2.10 Collaborative Working

Collaborative working means more than just trench sharing. It could include situations when one of the activities is works for road purposes and the other street works. It could also include multi-utility working, multi-utility tunnels and compliance testing.

All promoters are strongly urged to consider collaborative working. It is accepted that there are often issues in such arrangements, particularly contractual complications. Nevertheless every opportunity should be sought to minimise the disruption to users of the highway.

2.10.1 Responsibilities - primary and secondary promoters

In the event of collaborative working the primary promoter should take overall responsibility as the agreed point of contact with the permit authority. The secondary promoter(s) retain the same responsibility for submitting permit applications for work to be carried out by them or on their behalf.

If the nature of joint working is trench sharing, the primary promoter will excavate the trench and install its own apparatus. The secondary promoters will install their apparatus in the same trench. The primary promoter will then backfill and reinstate the trench unless it has been agreed with both the permit authority and the relevant secondary promoter beforehand that one of the secondary promoters do it. In this case the responsibility for the quality of the reinstatement will lie with the promoter that completed it. A similar approach to primary and secondary promoters will be followed for other forms of collaborative working.

Only those permit applications submitted by the primary promoter are required to show the estimated inspection units attributable to the street works. The primary promoter must detail the other promoters involved and the scope of the collaborative working in the initial application. The primary promoter must also ensure that estimates of works duration are agreed and/or confirmed with the secondary promoter(s) when submitting notices. This is necessary in order to comply with the overrun charging requirements in the permit regulations.

2.10.2 Issuing permits

To avoid any ambiguity, the authority will issue permits to all the promoters involved, not just the primary promoter. However, the fees will be adjusted to reflect the collaborative approach, provided all the applications meet the criteria set out in the regulations. Fees can also be adjusted at the discretion of the authority. All issued permits shall record the identity of the primary promoter and all the secondary promoters.

2.11 Phasing of Activities

A phase of an activity is a period of continuous occupation of the street (whether or not work is taking place for the whole time) between the start and completion of the works.

As one permit can only contain one phase the dates given in a permit application will denote the dates for that phase. A phase can end only when all the plant, equipment and materials, including any signing, lighting and guarding have been removed from the site.

2.11.1 Other activities

A promoter should clarify that an activity is to be carried out in phases on the application. Each phase will require a permit and possibly also a Provisional Advance Authorisation, which again must be cross referenced to the others. The cost of these permits may be reduced if the applications are made at the same time. The fees are detailed in 15.4 and discounts in 15.6.

Phased activities must relate to the same works. These could be a single or multiple-but-linked excavation, or a trench dug progressively along the street as part of a continuous operation.

A new main or cable run, which includes new customer connections, can be classed as one phase if all the work is completed in a single occupation of the street. Otherwise a new permit will be required for the customer connections stage.

Linked activities carried out at separate locations in a street must be treated as belonging to the same set of works. However, unconnected activities carried out by the same promoter in one street should not be treated as parts, or phases, of a single set of works.

Activity involving more than one street could form part of one project in management and contractual terms but separate permits and Provisional Advance Authorisations will be required for each street. The Technical Specification for EToN allows for project references, activity references and phase types.

2.12 Reinstatements

If a permanent reinstatement cannot be completed on the first pass, the activity shall be regarded as having two separate phases. Under the provisions of NRSWA this will mean two separate works for section 74 charging. Each phase is from the start date in the relevant permit to the completion of either interim or permanent reinstatement and the removal of all surplus materials and equipment from site. The same activity reference must be used for all phases.

2.13 Interrupted Activities

If an activity is interrupted because, for instance, the promoter finds that he needs some specialist plant or apparatus, other than that originally planned; it is the promoter's responsibility to notify the authority. If the authority is content for the excavation to remain open whilst the missing equipment is obtained then a variation will be required, but if the authority wishes the road to be closed and returned to full traffic use then the promoter will need to apply for a further permit to complete the activity at a later date.

If the activity is interrupted because the promoter, or his contractor, has caused third party damage, then it is the promoter's responsibility to seek the authority's approval to a variation to allow the 3rd party damage to be repaired. The activity site remains the responsibility of the original promoter until it is able to issue a Works Clear or Works

Closed notice.

If an activity is interrupted at the request of the authority, they should discuss this and agree to a variation to cover the situation, or if necessary a further permit to allow the activity to be completed later.

Whenever an activity is interrupted, the promoter should first agree a way forward with the authority before starting any of the processes above.

3. THE REGISTER

3.1 Introduction

The permit regulations require each permit authority to maintain a register of each street covered by their scheme. The register should contain information about all registerable activities on those streets and forward planning information about activities and other events which could potentially affect users of the streets (see 2.9)

Permit authorities will still need a register under section 53 of NRSWA for street information. This will cover those streets that are not part of the permit scheme including non-maintainable streets

Requirements for NRSWA registers are contained in the *Code of Practice for Co-ordination of Street Works and Works for Road Purposes and Related Matters*.

It is recommended that authorities meet the statutory requirements for maintaining the two registers in such a way that the information can be combined easily to aid the co-ordination of activities and to provide information to road users.

Permit and notice management systems receive notices and permit applications electronically and allow an authority to manage them together with other relevant information. It often happens that one computer system doubles-up as the register and the permit and notice management system in a permit authority. This is acceptable provided the system fully meets the requirements for both Registers and Notice Management Systems.

3.2 Register Keepers

For maintainable highways, the permit authority will usually be the highway authority.

For streets which are not maintainable highways (non-publicly maintainable or private streets) the street authority is the street manager. Maintaining a register might impose unreasonable burdens on street managers who are often just the householders fronting the street, so the regulations under NRSWA exempt street managers from the requirement to keep registers. Instead the local highway authority is required to keep the register of non-maintainable highways. As permit schemes do not apply to private streets, the record of activities in those streets would consist of notices under NRSWA and the street authority should continue to keep these on the NRSWA section 53 street works register.

3.3 Local and Central Registers

A local register is a register that is maintained by a single permit or street authority for its own geographic area. It will include information on all streets other than those streets that are the responsibility of another authority.

A central register is a register covering two or more authority areas that is maintained by one single authority, the 'register authority'. A central register could, for example, include all authorities in a metropolitan area.

3.4 Form of Registers

The register shall be kept on an electronic system. *The Street Works (Registers,*

Notices, Directions and Designations) (England) Regulations 2007 require that all registers shall use GIS by April 2009. Permit registers should follow this requirement to ensure consistency between all holdings of street-related data. Each register must be maintained against the same digital map base to ensure consistency between all holdings of street-related data. This common geographical dataset should be vector-based, nationally consistent, maintained and seamless, with changes published on a regular update cycle.

It should include:

- vector objects (polygons, lines and points) representing real-world geographical features and boundaries, each with well-defined lifecycles and royalty-free unique identifiers suitable for referencing
- road centreline geometry objects, each with royalty-free unique identifiers, which reference the road surface and form a complete and fully consistent topological network with no breaks or misalignments at administrative boundaries.

All authorities should synchronise their holdings of the common digital map data so that they all contain the same version of the data at any given point in time. Table 2 sets out the minimum specification.

| Table 2. The minimum specification of the common map base | |
|--|---|
| Scale | Urban areas: 1:1250 Rural areas: 1:2500 Remote areas: 1:10000 |
| Accuracy | Urban areas: $\pm 1.0\text{m}$ Rural areas: $\pm 2.0\text{m}$ Remote areas: $\pm 4.0\text{m}$ |
| Coverage | National and seamless, exhausting space over all land areas. |
| Geometry Types | Point, Line and Polygon. |
| Classification | Objects classified by physical form. |
| Update Cycle | 8 weeks (max.) |

All streets in Local Street Gazetteers should reference the road centreline geometries in the common map base (using royalty-free unique identifiers), which should in turn reference polygons representing the road surface. Such a structure promotes consistency and maximises the possibility for interoperability between applications, both in the highway's arena and in a wider context.

In essence, local authorities should provide the USRN definitions and attribution as defined in BS7666, while the geometries should be recorded by referencing the road centreline objects in the digital map base. This will promote reuse and consistency between datasets. All data should follow the principles of the Digital National Framework (www.dnf.org).

3.5 Content of Registers

The permit register must record:

- copies of all Provisional Advance Authorisation, permit and permit variation applications submitted to the permit authority relating to registerable activities in any street
- copies of all permits and Provisional Advance Authorisations given by the authority, including conditions attached as well as all variations to permits and conditions including any permits "deemed" granted (see 11.1.4)
- copies of all revoked permits, refused Provisional Advance Authorisations and refused permits, together with the reasons for such refusals;
- copies of all notices, consents and directions served by a street authority under section 58 or 58A of NRSWA;
- copies of all notices served by a promoter under sections 58 and 58A of NRSWA
- copies of all notices given under section 74 of NRSWA
- description and location of activities for which plans and sections have been submitted under Schedule 4 of NRSWA (streets with special engineering difficulties)
- particulars of notices given by any relevant authority under Schedule 4 of NRSWA
- particulars of street works licences under section 50 of NRSWA, including details of conditions and changes of ownership and of any NRSWA notices or directions associated with those licenses;
- information under section 70(3) and (4A) of NRSWA as to completion of reinstatements;
- particulars of apparatus notified to the street authority under section 80(2) of NRSWA;
- every notice of works pursuant to section 85(2) of NRSWA;
- details of every street for which the local highway authority are the street authority;
- details of every street which is a prospectively maintainable highway over which a permit scheme would operate;
- details of every street over which a permit scheme would operate, of which the local authority is aware, which is a highway but for which it is not the highway authority;
- details of every street which is a) a protected street; b) a street with special engineering difficulties; c) a traffic-sensitive street.

Authorities should ensure that their register also includes the following items, which are contained within the ASD:

- the road category of each street;
- details of every street where early notification of immediate activities is required.

3.6 Access to Registered Information

3.6.1 Access to registers

Everyone has a right to inspect the register, free of charge, at all reasonable times, except as noted in 3.6.2. "All reasonable times" may be taken to mean normal office hours (e.g. 08:00 to 16:30, Monday to Friday except Bank Holidays).

Permit authorities are strongly recommended to publish their register on their public website. This should be available 24 hours a day, seven days a week, except for those occasional times when it will be unavailable due to upgrade and maintenance. This work should, wherever possible, be done outside normal office hours.

Much of the detailed information in the register is unlikely to be of interest to the public. It is therefore suggested that the website display the headline information first and allow users to drill down to more detailed information. However, it is the responsibility of the local authority to decide how much information to make available in this way.

Permit applications and notices contain confidential information such as names and telephone numbers of contacts in organisations. Authorities should make sure that such information remains confidential. Authorities should also make it clear that they are not responsible for the accuracy of information concerning those activities for which they are not the promoter.

The website should allow records to be searched by the USRN or the "street descriptor" (the street name, description or street number) as given in the NSG. The Highways Agency has its own methods of disseminating such information on trunk roads and motorways.

Public access to websites should be read-only to prevent unauthorised amendment to records.

3.6.2 Restricted information

Restricted information is anything certified by the Government as a matter of national security, or information which could jeopardise the promoter's commercial interests such as details of a contract under negotiation. The promoter should indicate restricted information on the application.

Restrictions on the release of information should as limited as possible. In particular, it should not be assumed that because some item of information about an activity needs to be restricted, all information about it needs to be. For example, a Provisional Advance Authorisation might need to be restricted for commercial reasons, whereas a later permit need not be. The case for restriction needs to be considered on an item-by-item rather than an activity-by-activity basis.

The right of access to restricted information is limited to:

- (a) persons authorised to execute any type of activity in the street; or,
- (b) persons "otherwise appearing to the authority to have a sufficient interest".

Any person wishing to see restricted information must satisfy the permit authority, as a minimum, that his interest is greater than the general interest of the ordinary member of the public.

Restricted information should not be shown on highway authorities' websites.

3.6.3 Retention of information

Information provided by means of any permit application under the TMA or notice under NRSWA should be retained on the register for at least six years after completion of the guarantee period of the activity referred to in the notice. Information about other activities should be retained on the register for at least six years after completion.

Any legal claims in relation to the activity must be brought within six years of the date on which the event which forms the basis of the claim occurred. In the case of personal injuries, claims must be brought within three years of the date on which the event happened. However, in the case of a person who is below 18 years of age, the claim can be made up to three years after they reach 18. Information should be kept for those periods for that purpose, which may mean 21 years and nine months in the case of injury to an unborn child.

Permit authorities will need to decide how to keep the information on the register. Because of the size of the database the authority may decide to archive information, or a subset of the information on the register for a longer period or even indefinitely.

Both authorities and utility companies will need to obtain their own legal advice and guidance on how to meet these requirements.

4. THE STREET GAZETTEER AND ADDITIONAL STREET DATA

4.1 Introduction

This chapter provides information about a nationally consistent street gazetteer (NSG) which contains basic and consistent information about all streets in England.

4.2 The Street Gazetteer

Every local highway authority produces a Local Street Gazetteer (LSG) and a copy is held centrally by the NSG Concessionaire. Each of these local gazetteers shall contain the information, required by and defined in the Technical Specification for EToN, about the streets in that authority's area.

Permit authorities and activity promoters may obtain full copies and updates of the street data from the NSG Concessionaire's website.

4.2.1 Creating and updating the NSG

Street gazetteers shall be created, maintained and published at Level 3 (as defined in BS 7666).

It is the local highway authority's responsibility to create and maintain street gazetteer data for all streets within their geographical area, whether or not it is the street authority for any particular street.

4.2.2 Referencing

Information held in permit registers must be referenced to the Unique Street Reference Number (USRN) which relates to the Type 1 or Type 2 street entry given for each street in the street gazetteer - see the Technical Specification for EToN.

It is essential that all users are working from the same data. In most cases this will be the street gazetteers on the NSG concessionaire's website. The owner of the particular street gazetteer should be able to use their own copy which should be the same as that held by the NSG concessionaire.

4.2.3 Provisional streets

A provisional street is a street that does not yet have an entry in the NSG. Typically, these will be new and/or private streets. The street authority must register private streets. A permit application, or Provisional Advance Authorisation application, for a proposed activity should be submitted against a provisional street only if an activity promoter is certain that the street concerned is not in the NSG. It is then the responsibility of the local highway authority to allocate a USRN, notify the activity promoter, and create a level 3 entry in the LSG and SG website. The promoter should then use this USRN in all further permit applications and notifications relating to the activity.

Under section 87 of NRSWA, a highway authority should make a declaration that a street is likely to become a maintainable highway. The declaration should be registered as a local land charge.

4.2.4 Trunk road network

There is a Trunk Road Street Gazetteer (TRSG) for the motorway and trunk road network maintained by the Highways Agency. Works on streets maintained by the Highways Agency should be notified using the trunk road referencing number (TRRN) contained in the TRSG, instead of the USRN.

4.3 Additional Street Data

Additional Street Data (ASD) refers to other information about streets held on the NSG Concessionaire's website alongside the NSG data. Highway authorities, activity promoters and other interested and approved parties may obtain copies and updates to this data from the concessionaire.

Local highway authorities should provide the following information for the ASD:

- (a) the street authority responsible for maintaining the street;
- (b) whether the street is publicly maintainable, prospectively publicly maintainable, or private;
- (c) whether the street, or part of the street, is covered by a permit scheme or the NRSWA notification regime, who the permit authority is or street authority is, details of shared streets if this applies, and whether it is an individual, common or joint scheme (see Chapter 7 for definitions of joint and common schemes);
- (d) any other authorities and activity promoters with an interest in the street;
- (e) the street reinstatement category;
- (f) designations of protected streets;
- (g) designations of streets with special engineering difficulty;
- (h) designations of traffic-sensitive streets;
- (i) whether the street is subject to early notification of immediate activities;
- (j) where possible, streets on which it might be expected that conditions relating to the non use of that street for new apparatus, but not the maintenance of existing apparatus, may be used;
- (k) other features of the street, such as structures, environmental areas, parking restrictions, priority lanes, special surfaces, standard surface and special construction needs etc.

Designations may cover only part of a street or may vary along a street. The relevant detail should be recorded in the ASD.

In the above list, items (a) to (h) are mandatory and (i), (j) and (k) are optional although street authorities are urged to make full use of these facilities.

If all parties agree, the ASD may also be required to contain other data for example traffic regulation and parking restriction orders that apply to the street and may need to be lifted temporarily for works or information that the Department for Transport may need from local authorities - such as inventory data.

4.3.1 Responsibility for creating and updating

Where the street authority is also the local highway authority, it creates the ASD

together with the NSG.

Where the street authority is not the local highway authority, it may create and submit its own ASD to the NSG Concessionaire. This should be referenced to the local highway authorities' gazetteers. Organisations that fall into this category are:

- The Highways Agency - which manages the motorway and trunk road network in England
- Transport for London (which manages the main road network within London)
- Network Rail (which is the street authority for level crossings between the barriers).

Any other authority, activity promoter or interested party should submit records to the NSG Concessionaire to ensure that their interest in a street is logged. The interest records should be entered into the ASD maintained by the local highway authority. This is particularly appropriate to neighbouring authorities in the exercise of their network management duty. The NSG Concessionaire will administer this process.

4.3.2 Procedures for creating and updating

The relevant authority should forward additions or amendments to the ASD to the NSG Concessionaire using the formats in the Technical Specification for EToN. These become valid as specified in the NRSWA regulations.

It is essential that all users work from the same data, especially in the case of designations. But it is impractical to require users to download updates from the website daily until dynamic on-line updating is available. Monthly updates are now proposed so that any changes to the ASD will be as current as possible without the requirement for on-line updating. Users of the ASD data must ensure that they are using the most current version of the data.

Provision for dynamic on-line updating of the NSG and ASD data is expected in the future.

5. STREETS SUBJECT TO SPECIAL CONTROLS

5.1 Introduction

The permit regime balances the need to reduce the bureaucracy involved in managing activities in the highway with the importance of minimising delay and inconvenience to road users, whilst protecting the integrity of the street and any apparatus in it. The regulations incorporate the provisions of NRSWA, which provides for three categories of special streets to be designated. The permit regulations can add a fourth category which is specific to such schemes.

The four categories of street subject to special controls:

- protected streets;
- streets with special engineering difficulties;
- traffic-sensitive streets; and,
- streets subject to early notification of immediate activities.

5.2 Protected Streets

5.2.1 Background

By virtue of section 61 of NRSWA, all “special roads” as defined in the Highways Act 1980 (i.e. motorways) are protected streets. In addition, a street authority may designate other protected streets that meet criteria specified in the regulations.

5.2.2 Designation

Streets may be designated as protected only if they serve, or will serve, a specific strategic major traffic need with high and constant traffic flows. There must also be a reasonable alternative route in which undertakers can place the equipment which would otherwise lawfully have been placed in the protected street. This includes services to existing or proposed properties in the street, or trunk supply routes passing through the street.

5.2.3 The implications of designation

Once a street has been designated as protected, the activities of all promoters will be severely restricted.

No activities may be carried out in the street (except by way of renewal) without the authority’s express consent (although lateral crossings should normally be allowed). However, should a permit for such activities be issued with stringent conditions attached, the authority may contribute to the promoter’s expenses in complying with those conditions. Any disputes that arise over designation of a protected street shall be settled by arbitration -see 14.6.

Activities by promoters in verges and central reservations which do not impinge on the carriageway should usually be acceptable. Road maintenance or repairs will in general be carried out at night, weekends, or other times with less impact upon traffic. However, working at night may cause conflict with Environmental Health Legislation.

See Chapter 13.)

Now that activity promoters need to apply for a permit for any registerable activities in a protected street covered by a permit scheme, the giving of a permit has superseded the provisions of NRSWA. However, permit authorities should note the protected street rules in approving permits, and in general it is unlikely that permits will be given for new activities. Promoters should therefore discuss their proposals for activities in a protected street with the permit authority before making an application.

5.2.4 Existing streets

Given the possible financial implications for activity promoters, designation should be contemplated only when essential.

The decision should be taken only after consultation and after other means of reducing delay and inconvenience have been explored.

The authority must justify the need, and:

- (a) take account of the needs of utilities to supply and maintain services to frontagers and to use such streets for existing trunk supplies; and,
- (b) reimburse reasonable expenses incurred by the undertaker if removal or alteration of apparatus in the street is required (subject to appropriate allowances for betterment, deferment of renewal and value of recovered apparatus). The cost-sharing arrangements for diversionary works do not apply.

5.2.5 New streets

Where a planned new street is being considered for designation, the authority shall consult all potential activity promoters and others, such as transport, bridge and sewer authorities as well as adjacent landowners and frontagers, who might have an interest. Where requested and reasonably practicable, the highway authority will make provision, at the promoter's expense, for necessary areas or strips for carrying services alongside carriageways, and for duct or service crossings.

5.3 Streets with Special Engineering Difficulties (SED)

5.3.1 Background

Under section 63 of NRSWA, the term 'special engineering difficulties (SED)' relates to streets or parts of streets associated with structures, or streets of extraordinary construction where activities must be carefully planned and executed in order to avoid damage to, or failure of, the street itself or the associated structure with attendant danger to person or property.

Under Schedule 4 of NRSWA, plans and sections of proposed activities must be approved by each relevant authority with an interest in the structure concerned, i.e. the street authority, and/or the sewer, transport or bridge authority. This remains the case where streets are subject to a permit scheme.

5.3.2 Scope of designations

The designation of streets with SED should be used only where strictly necessary

bearing in mind the safeguards provided elsewhere in NRSWA, for example, sections 69 (for other apparatus in the street), 88 and 89 (for bridges and sewers), and 93 (level crossings and tramways). This is in the interests of all concerned - permit authority, activity promoter and where appropriate, the owner of the structure.

Circumstances where designation may be appropriate include:

Bridges

The street may be designated if the bridge authority is concerned about the impact of activities in the street on the strength, stability and waterproofing of the bridge, or access for maintaining it, or for any other purpose. In general, the designation would relate to the whole of the bridge structure, but it will only be necessary to designate the area adjacent to the bridge and not the whole length of the street.

Retaining walls

Retaining walls may be designated where they give support to the highway and bridge abutments, and where the foundations are sufficiently shallow for excavation to affect the integrity of the structure. Where foundations are piled, designation is likely to be necessary only if excavation could alter the degree of support given to the piles by the soil.

In many cases, it will be necessary to designate only the adjacent area and not the whole width of the street. A distinction should be made between areas appropriate for excavations no deeper than 1.2 metres, and areas where further restrictions are needed if an excavation is deeper.

Cuttings and embankments

Areas adjacent to cuttings and embankments should be designated if excavation could lead to slides or slips of the soil, or could affect special construction features such as earth reinforcement systems or lightweight fills. The whole width of street, or specific areas similar to those for retaining walls, may be designated

Isolated structures

Examples of isolated structures include high-mast lighting columns and large sign gantry supports. Where excavation could affect stability, areas immediately around the supports should be designated, again distinguishing between excavations up to 1.2 metres deep and those that are deeper.

Subways and tunnels at shallow depth

Areas immediately above the structure and adjacent areas may be designated.

Tramway tracks in the street

Areas occupied by the tracks and immediately adjacent areas may be designated. Additional protection to the appropriate authority is also given in section 93 of NRSWA. See also 19.3 and appendix C.

Culverts

The area of the street immediately above a culvert may be designated where the structural integrity of the pipe or channel could be adversely affected by activities. It

would not therefore be expected that, for example, a reinforced concrete pipe or box culvert would justify designation. A masonry or steel culvert could be considered if the depth of cover is shallow.

Undertaker's apparatus

Designation may be required only in exceptional circumstances, such as electricity pylons adjacent to the carriageway, or the presence of critical operational apparatus, for example, communications or signalling cables for transport operators like Network Rail or London Underground. In most cases, the safety and security of apparatus is adequately covered by sections 69 or 89 of NRSWA.

Pipelines

Some types of government and private sector oil or gas pipelines, and similar structures which cross or traverse the street, may justify designation.

Engineering problems

Streets may be designated if they pose extraordinary engineering problems in the event of excavation, for example, a weak road, which may have been constructed using a continuously reinforced concrete slab or geo-textiles and is founded on very poor soil, such as a peat bog.

5.3.3 Designation on request

An authority may be asked to designate a street as having special engineering difficulties by:

- a transport authority on the grounds of proximity to the street of one of its structures; or,
- an undertaker having apparatus in the street.

The authority must consider any request carefully. It may then make the designation, with or without modifications, or decide not to do so. The authority should carefully consider the arguments for and against the proposed designation and shall always act reasonably in coming to its decision.

If the authority declines to make the designation requested, the transport authority or undertaker may appeal to the Secretary of State.

5.3.4 Practical considerations

Designations should not be made as a matter of policy wherever there is a bridge or structure that is likely to be affected by activities in the street. Each case should be considered on its merits. Authorities and owners of structures should re-examine these designations periodically and withdraw any that are unnecessary in the light of other safeguards in NRSWA or other legislation.

5.3.5 Cellars

It is not practical for the authority to identify all cellars under footways and carriageways and to decide whether they justify an SED designation.

Owners of cellars must notify the highway authority under section 180 of the Highways

Act 1980, if they wish to carry out works. The highway authority will in turn notify interested activity promoters before any activity begins.

Activity promoters wishing to carry out work in areas where they know, or might reasonably be expected to know, of the existence of cellars should notify the cellar owners or frontagers when they intend to carry out:

- excavations close to cellars; or,
- extensive excavations which will impinge upon cellars.

5.3.6 Policy guidance

The street authority is responsible for designating sections of streets with SED, maintaining a list of such designations and creating the appropriate ASD record - subject of course, to the provisos on other ASD creators in 4.3. However, it is important that:

- the owner of the relevant structure informs the authority of its existence so that it can be considered for designation;
- the key relationship, in terms of ensuring that adequate precautions are taken, is that between a promoter proposing any activity in the street and the owner of the structure.

For this mechanism to work effectively, it is essential that:

- the street authority, activity promoters, bridge authorities and other owners of relevant structures consult and co-operate on the designation, and withdrawal of designation, of sections of streets with SED;
- on receipt of permit applications covering sections of street with SEDs the authority ensures that the necessary actions are in hand;
- arrangements for handling immediate works on sections of streets with SED are agreed between activity promoters and the owners of structures;
- there are early discussions between activity promoters and the owners of the structures concerned in the cases of planned major works and provision of new supplies.

5.4 Traffic-Sensitive Streets

5.4.1 Background

Under section 64 of NRSWA a street authority may designate certain streets (or parts of streets) as "traffic-sensitive" if they meet the criteria set out below, or by agreement with the majority of undertakers known to have apparatus in the street concerned.

Designation highlights that activities proposed in these situations are likely to be particularly disruptive to other road users. They do not necessarily prevent occupation during traffic-sensitive times but additional requirements will be imposed on promoters. Even if a street meets one of the criteria, it does not mean that a designation has to be made - each case should be dealt with on its merits.

Designation may apply to the carriageway only, to a footway or pedestrian area only, to part of a length of street, and to certain times of day, days of the week, or days of the

year, depending on circumstances.

Once a designation is made it applies to all activities taking place in the street. All activity promoters should avoid carrying out activities in the carriageway of traffic-sensitive streets at sensitive times unless there is no alternative.

5.4.2 The criteria for designation

To encourage activities outside the traffic-sensitive period, authorities should not make a designation for any period longer than is strictly necessary.

One or more of the following criteria should apply before an authority may designate a street as traffic-sensitive:

- (a) the street is one on which at any time the street authority estimate traffic flow to be greater than 500 vehicles per hour per lane of carriageway, excluding bus or cycle lanes;
- (b) the street is a single carriageway two-way road, the carriageway of which is less than 6.5 metres wide, having a total traffic flow of not less than 600 vehicles per hour;
- (c) the street falls within a congestion charges area;
- (d) traffic flow contains more than 25% heavy commercial vehicles;
- (e) the street carries in both directions more than eight buses per hour;
- (f) the street is designated for pre-salting by the street authority as part of its programme of winter maintenance;
- (g) the street is within 100 metres of a critical signalised junction, gyratory or roundabout system;
- (h) the street, or that part of a street, that has a pedestrian flow rate at any time of at least 1300 persons per hour per metre width of footway;
- (i) the street is on a tourist route or within an area where international, national, or significant major local events take place.

5.5 Procedure for Making Designations

Before making any designation, the authority shall give a notice which:

- specifies a period of not less than one month, when objections may be made; and,
- for designations of streets as traffic-sensitive, identifies the criteria that is met.

To:

- every activity promoter known to the authority to be working in its area or who has given the authority notice of its intention to commence working in its area;
- every other local authority for the street to which the proposed designation relates;
- Transport for London, where the street is in Greater London;
- the chief officer of police, chief executive of fire and rescue authority, the chief; executive of the National Health Service ambulance trust and other emergency services

- Passenger Transport Executives and other transport authorities, for instance light rail operators;
- any other person who has submitted a written request to be given notice of a proposed designation. This may include other street authorities such as the Highways Agency or Network Rail;
- for the designation of streets as protected, the occupiers of properties fronting the street concerned.

The occupiers of any property that fronts a street which is proposed to be designated as protected should also be given a copy.

If the authority does not receive any objections within the specified period, or if all objections have been withdrawn, the authority may make the designation.

If there are outstanding objections at the end of the consultation period, the authority must give them careful consideration. In the case of a proposed designation of a street as protected, a local inquiry should be held and its report considered alongside the objections. The authority may then make the designation, with or without modifications, or decide not to do so. It should carefully consider the arguments for and against the proposed designation and should act reasonably in coming to its decision.

When a designation is made, the highway authority shall submit the relevant ASD to the NSG Concessionaire straight away. The designation will become valid as specified in 4.3.2.

5.6 Procedure for Withdrawing Designations

It is recommended that the authority reviews its designations periodically.

Any person entitled to a notice under the designation procedure or anybody else the authority considers to have sufficient interest, may apply to that authority to withdraw the designation. The authority should carefully consider the arguments for and against the proposed withdrawal of designation and shall always act reasonably in coming to its decision.

An authority can withdraw a designation at any time, subject to the following provisions:

- a) if the original designation was made at the request of a transport authority or undertaker, no withdrawal shall take place without prior consultation with them;
- b) if the original designation was made following a direction by the Secretary of State, no withdrawal shall take place without his consent.

Where a withdrawal is made, the highway authority shall submit the relevant ASD to the NSG Concessionaire straight away. The withdrawal will become valid as specified in 4.3.2

5.7 Streets Where Early Notification of Immediate Activities is Required.

Certain streets are especially sensitive to disruption and of such traffic importance that immediate activities can cause significant problems even before a permit can be applied for and issued.

Where an authority has the appropriate infrastructure and procedures in place, the earliest possible information about the activity will enable it to initiate traffic management arrangements and provide information to motorists that will mitigate the impact of the activity. This would typically involve a manned control centre with the ability to adjust traffic signals and/or variable message signs to provide information to motorists in real time.

If the authority has such facilities it may require the promoter to contact the authority by telephone prior to carrying out any activity in that street.

To set up this mechanism the permit authority can set conditions which apply where a permit is not required – for immediate works this would cover the period before a permit is granted. The authority should ensure that information about such conditions is recorded in the NSG/ASD and notified to promoters in the same way as for other streets with traffic-sensitive designation. The terms should be well publicised, through for example, the authority's website (see 11.5)

Designation of such streets should follow the same consultation process as for traffic-sensitive streets.

5.8 Other Features of the Street

5.8.1 Features

Many features of a street can affect the planning and co-ordination of activities. These may be subject to restrictions imposed by legislation other than NRSWA or TMA. To enable best practice, information about such features may be held as Additional Street Data in the NSG. Data capture codes have been defined for the following features:

Environmentally sensitive areas

These include such areas as Sites of Special Scientific Interest and Ancient Monuments. The Special Designation Description indicates the type of sensitive area.

Structures (not designated as being of Special Engineering Difficulty)

Activities carried out near various structures in the highway warrant extra care, even if the structures are not designated as SED - see Appendix D. The Special Designation Description indicates the type of structure.

Special surfaces

These include, but are not restricted to, such surfaces as porous asphalt, tactile, and coloured surfaces. The Special Designation Description indicates the type of surface.

Pipelines

Government and private sector oil or gas pipelines.

Priority lanes

These include cycle routes and bus lanes. The Special Designation Description indicates the type of priority lane.

Level crossing Precautionary Areas

This Special Designation Description indicates the extent of the Precautionary Area. When activities are proposed within the Precautionary Area, extra safety measures required by the rail operator must be applied. See 19.3 and Appendix C.

Special construction needs

This description indicates the extent and type of special construction and could include such sites as geo-textile mats and areas where sulphate-resistant concrete is required.

Parking bays and restrictions

This Special Designation Description indicates streets with parking meters and residents' parking bays, parking restrictions such as red routes and other permanent parking restrictions. This will alert activity promoters to plan any necessary action such as applying to the local authority to have parking suspended.

Pedestrian crossings and traffic signals

This Special Designation Description indicates where streets have signalled controlled pedestrian crossings and permanent traffic signals.

Speed limits

This Special Designation Description indicates the speed limit appropriate to the street.

Transport authority critical apparatus

This is apparatus used or owned by a transport authority that is critical to its operations and if damaged or interrupted could disrupt or temporarily stop services. For instance, damage to high voltage cables supplying power to a rail network would cause its closure and severe inconvenience to passengers.

6. DISAPPLICATION AND MODIFICATION OF NRSWA

6.1 Disapplication of NRSWA

The permit regulations disapply or modify certain sections of NRSWA. In permit areas the duties of activity promoters and street authorities under the following sections of NRSWA are replaced by equivalent duties imposed under Part 3 of the TMA and the regulations.

| Table 3. Promoters' duties - disapplied sections of NRSWA | | | |
|--|---|---------------|--|
| NRSWA Section | | Change | Permit Regulations – Revised Arrangements |
| S 53 | The street works register | Disapplied | Permit regulations prescribe similar provisions for permit registers. |
| S 54 | Advance notice of certain works | Disapplied | Replaced by applications for provisional advance authorisation. |
| S 55 | Notice of starting date | Disapplied | Replaced by applications for permits. |
| S 56 | Power to direct timing of street works | Disapplied | Replaced by permit conditions and variations, including those initiated by the permit authority. |
| S 57 | Notice of emergency works | Disapplied | Replaced by applications for immediate activities. |
| S 66 | Avoidance of unnecessary delay or obstruction | Disapplied | Replaced by equivalent provisions for permit authorities to require promoters in breach of the permit requirements to take remedial action and failing that for the authority to act. 24-hour compliance period to be replaced with a requirement for promoters to comply within a reasonable specified period determined by the circumstances. |

6.2 Modifications to NRSWA

The Permit Regulations modify the following sections of NRSWA to accommodate the issuing of permits rather than the exchange of notices:

| Table 4. Promoters' duties – modifications to NRSWA | | | |
|--|---|----------------------|---|
| NRSWA Section | | Change | Permit Regulations - Revised Arrangements |
| S 58 | Restriction on works following substantial road works | Modified | The authority's ability to issue permits with start and end dates replaces directions to start work covered in S 58 (5) to (78). The regulations provide the equivalent of S 58A powers by allowing authorities to take into account whether promoters responded to the S 58 notice by submitting an application for their planned activities. |
| S 58A | Restriction on works following substantial street works | Modified | Schedule 3A is modified to work in conjunction with permits. |
| S 64 | Traffic-sensitive streets | Modified | Permit regulations provide that permit applicant are notified of proposals to designate streets as traffic-sensitive streets. |
| S 69 | Works likely to affect other apparatus in the street | Effectively extended | Permit regulations create an equivalent requirement on highway authority promoters. |
| S 74 | Charge for occupation of the highway where works are unreasonably prolonged | Modified | Permit regulations make provision to operate in parallel with permits. |
| S 88 | Bridge, bridge authorities and related matters | Modified | Modified to work in conjunction with permits. |
| S 89 | Public sewers, sewer authorities and related matters | Modified | Modified to work in conjunction with permits. |
| S 90 | Provisions as to reinstatement of sewers, drains or tunnels | Modified | Modified to work in conjunction with permits. |
| S 93 | Works affecting level crossings or tramways | Modified | Modified to work in conjunction with permits. |

6.3 Other Restrictions

NRSWA imposes various restrictions on all undertakers, such as procedures for working on streets with special engineering difficulties or near to level crossings. To maintain equal treatment for all promoters under permit schemes, authorities should apply equivalent requirements to highway authority promoters, even though they may be part of the same local authority, as they do to utilities and other promoters.

The TMA aims to mandate the *Safety Code of Practice*, issued under section 65 of NRSWA, in the longer term. Section 71 of the TMA makes provision for this but until it is implemented authority works promoters are encouraged to comply with the safety code within the permit regime. It is suggested that permit authorities attach a condition to this effect to permits for highway activities.

7. APPLICATION TO BECOME A PERMIT SCHEME OPERATOR

7.1 Introduction

Permit schemes give authorities greater control over activities on the street. Authorities in England wanting to manage work on their networks through a permit scheme must submit a formal application to the Secretary of State.

7.2 Applications to Operate a Permit Scheme

A permit scheme can be operated by:

- a local highway authority, or two or more such authorities acting together
- a "Secretary of State" - in effect this means the Highways Agency (on behalf of the Secretary of State for Transport) in England and,
- the Secretary of State for Culture, Media and Sport - on roads in the Royal Parks.

The Secretary of State also retains reserve powers to compel a local authority to apply to run a permit scheme.

7.2.1 Where a scheme can operate

An authority can apply to operate a permit scheme for all or some of its roads. Options include:

- requiring permits for all roads, including minor roads, with each application scrutinised individually;
- requiring permits for all roads and dealing with permit applications on minor roads on an exception basis; or,
- requiring permits on main roads (e.g. category 0 – 2 and traffic-sensitive roads) but using the revised NRSWA noticing regime on all other roads.

Permit schemes can not apply to roads that are not maintained at the public expense or private streets. The existing notification arrangements under NRSWA, as amended by the TMA, will continue to apply where a permit scheme is not in operation. To assist works promoters, authorities are required to indicate in the ASD which streets are subject to a permit scheme and which are subject to the NRSWA notification scheme.

7.2.2 Consultation

There is a statutory requirement for Highway Authorities to carry out a full consultation of the following stakeholders before applying to run a permit scheme:

- a) Every works promoter which carries out activities from time to time in the area (at present this does not include skip, hoarding and scaffolding promoters).
- b) Every local authority (other than the street authority) with a street in the area of the proposed scheme.
- c) Transport for London, where any street, to which the proposed scheme applies, is in Greater London.

- d) Any Passenger Transport Executive or other transport authority in whose area the street is located.
- e) The Chief Officer of Police, the Chief Executive of the Fire and Rescue Authority and the Chief Executive of the National Health Service Ambulance Trust and any other emergency services, e.g. Coastguards, responsible for operations in the area..
- f) The Secretary of State

The authority must also consult other appropriate persons, including:

- a) Any authority that has registered an interest in receiving copies of permit applications for any of the streets to which the proposed scheme applies.
- b) Any person who has made a written request to the street authority to be given notice of the proposed scheme.

Authorities are likely to start preparing permit schemes once the details of the regulations are known but well before they are actually made. Consultation on a proposed permit scheme carried out prior to the regulations being made will be valid for the purposes of an application, provided there were no significant differences between the consultation proposals and the scheme applied for. Similarly, should the regulations be amended in due course, an authority which consulted before the change and applied to the Secretary of State after the change, might have to adapt its scheme to meet the revised regulations. The significance of any change will determine what further consultation is needed. In both cases, authorities should discuss the situation with the Department.

7.2.3 Content of applications

Applications must contain the following information:

- a) A description of the proposed scheme including:
 - the area to which it will apply (and whether it will also cover areas in other authorities);
 - the streets over which it will operate. See 7.2.1;
 - what provisions the authority proposes to include - where the regulations allow flexibility in the operation of a scheme.
- b) name of highway authority(ies);
- c) the objectives of the scheme, including an explanation of how performance against these will be measured, and an appraisal of the expected costs and benefits;
- d) the date the authority will be ready to start operating the scheme (this must be a minimum of four months after the application date, unless previously agreed otherwise);
- e) transitional arrangements;
- f) confirmation that a consultation (which included, at a minimum, the statutory consultees) has taken place; the outcome and any changes

made as a result;

- g) justification and explanation of proposed fee levels, taking account of any further guidance that the Secretary of State may issue in this regard; and
- h) proposals for how the scheme will be operated, including:
 - how the authority will administer its own works to ensure parity of treatment with activities carried out by statutory undertakers. This includes the measurement of KPIs (see Chapter 20);
 - how the permit scheme will work alongside other measures to enable the authority to meet its network management duty requirements.

Authorities need to ensure that proposed schemes will comply with Part 3 of the Traffic Management Act 2004 and the Permit Regulations otherwise the application will be rejected.

7.2.4 Scheme Orders

The Secretary of State can approve or reject a scheme. He also has the option of approving the scheme with modifications. Where applications are approved the Secretary of State will make an Order to this effect.

The Secretary of State has reserve powers to revoke or modify an Order if it becomes apparent that an authority is not operating its scheme effectively or equitably, for example. This could be indicated by the KPI measures or by the authority's own assessments (as outlined in its application – see 7.2.3) if they reveal that the scheme does not and can not perform as expected.

If the Secretary of State revokes or modifies an existing Order or the authority ceases the scheme all works promoters should be notified at least four weeks in advance of the change. The process in 7.2.5 should be followed unless otherwise agreed with the Secretary of State.

7.2.5 Notifying promoters

Once an Order has been made, an authority will need to give all works promoters in its area at least four weeks notice of its intention to operate a permit scheme from a given date. The authority should also provide promoters with details of the approved scheme as it may differ from the one applied for. Details could be sent with the notification of the start date or placed on the authority's website along with the transitional details set out in accordance with Chapter 21.

7.3 Joint Permit Schemes

A local highway authority can apply to operate a scheme solely on roads in its area. Alternatively, several authorities may submit a joint application to operate a permit scheme over their combined areas. Such a scheme could be administered by one authority on behalf of all the others or by each authority retaining responsibility for the scheme within its boundaries.

Authorities applying to run a joint scheme will need to show that they have fully discussed and agreed how the scheme will be controlled and the fees apportioned.

They will also have to demonstrate how each authority will meet its network management duty requirements whilst operating a joint permit scheme.

Proposals for a joint scheme should include arrangements whereby one authority could leave without ending the entire scheme for the other participants. The arrangements should also specify the notice period for a withdrawal. An authority would have to justify why it wanted to leave the scheme and obtain the Secretary of State's approval.

7.4 Common Permit Schemes

A 'common permit scheme' is a scheme with a single set of rules, which a group of neighbouring authorities apply independently to their own roads – subject to the usual cross boundary co-operation. A common scheme, in contrast to a joint scheme, requires an application and an Order for each authority.

It would be helpful if authorities co-ordinated their applications and indicated that they were adopting a common scheme. They should include any neighbouring schemes already in operation.

Authorities may want to co-ordinate the consultation on a common scheme because many of the stakeholders will be the same. Each authority must ensure that all of its statutory consultees are included and that it considers the results of the consultation in relation to its own proposed operation of the scheme.

Each authority must also demonstrate that it is in a position to operate a scheme for its roads in accordance with the requirements of the Traffic Management Act, the Permit Regulations and this Code of Practice. Authorities planning common schemes are recommended to discuss with the Secretary of State the most appropriate way of meeting the requirements for applying to operate a scheme.

7.5 Changes to Permit Schemes

An authority may want to change its permit scheme to include or exclude additional streets or to change its fees, for example. The authority must apply to the Secretary of State if a change in the scheme Order is required. It should explain and justify the changes based on the relevant elements of paragraph 7.2.3. The full four months for a new scheme application may not be necessary depending on the nature of the changes involved. Authorities must agree any lesser time with the Secretary of State.

In general, any changes to a permit scheme should be subject to the same consultation as the original scheme. However, the permit authority may carry out a reduced and /or shortened consultation if the changes are minor. In these cases authorities should discuss the situation with the Department.

From time to time the Secretary of State may revise the permit regulations. This could necessitate changes in existing schemes. Regulations will make provisions for such changes if they are required and the Code of Practice will be amended as necessary.

If an authority decides that it wants to stop running a permit scheme, it should first consult all interested parties and then apply to Secretary of State to revoke the Order establishing that scheme.

8. RESTRICTIONS ON FURTHER ACTIVITIES

8.1 Introduction

People may sometimes get the impression that road works take place without any thought given to minimising disruption to residents and road users. All too often, it appears as if roads have been dug up repeatedly by different bodies with no apparent co-ordination, or within months of resurfacing.

To address this, provisions have been made in NRSWA to allow authorities to restrict works in all or part of a street following:

- Substantial Road Works (Section 58); and,
- Substantial Street Works (Section 58A)

The authority may decide not to exercise its powers under section 58 or section 58A.

These powers also apply to streets covered by permit schemes. The process for managing other activities, which promoters decide that they need to carry out before the restriction comes into effect, is modified from NRSWA to reflect the fact that under a permit scheme activities are controlled through permits. Restrictions apply only to the length of the street on which such substantial road or street works have been carried out. Under permit schemes the restrictions apply to all activities covered by the scheme.

There are three elements to the provisions for each of the restrictions:

- substantial highway works or substantial street works which trigger the restrictions
- processes and actions before the substantial works take place to make sure that as much activity as is likely to arise over the period of restriction can be carried out before it comes into force
- processes and actions during the restriction to accommodate emergencies or other activities that, exceptionally, can take place in that period.

The use of the forward planning information process at 2.9 should assist in managing situations when restrictions are required.

Restrictions which have been imposed on streets or parts of streets under NRSWA prior to an authority operating a permit scheme, will continue to apply following the changeover.

8.2 Substantial Works - Definition

8.2.1 Substantial Road Works

Substantial Road Works are works for road purposes affecting any of the carriageway, footway, footpaths, cycle tracks or bridleways and include resurfacing, reconstruction, widening or alteration of the level of the street. This includes specialist non-skid surface dressing.

Substantial Road Works extend at least 30 metres continuously and:

- reduces the width of a footpath, footway, bridleway or cycle track by more than two-thirds; or,
- prohibits the use of the carriageway by vehicles; or,
- reduces the width of the carriageway by more than one-third.

8.2.2 Substantial Street Works

Substantial street works means major activities which are street works that:

- have been identified in an organisation's annual operating programme or, if not identified in that programme, are normally planned or known about at least six months in advance of the date proposed for the activity; or,
- other than immediate activities, have a duration of 11 days or more.

8.3 Creating a Restriction

On receipt of an application for Provisional Advance Authorisation a Permit Authority wishing to impose a restriction following Substantial Street Works or Substantial Road Works should:

- a) Identify other activities that it already knows about that should also be completed before the restriction comes into force.
- b) Publish a notice of its intention to create a restriction on its website, giving at least 1 calendar month. The notice must describe the proposed activity and give the proposed start date; state the duration of the proposed restriction and the part of the highway that it will affect; and require any other promoters proposing activities who have not already applied for a permit, to do so within the calendar month (or more) period.
- c) Copy the notice to:
 - any sewer, transport or bridge authority with an interest in the street;
 - anyone who has given advance information of intended works;
 - anyone with apparatus in the street;
 - anyone who has registered an interest in that street;
 - the occupiers of any premises which have a frontage onto the street in question.
- d) Place a copy of the notice on the register;
- e) Place a copy on any central registers.

Copies of notices should be given electronically or by post, where appropriate.

No other activity promoter may now begin any works (other than exempted activities or those to which an authority has given consent - see 8.5.3) in that part of the street until all the activities referred to in the last paragraph have been completed.

Activity promoters must reply to such notice received from permit authorities within the 1 calendar month (or more) notice period. In the case of section 58 processes, the failure of a promoter to make an application in response to the notice can be taken into account by the permit authority in deciding whether to issue a permit, i.e. if the promoter could have applied but does not do so, they run the risk of not obtaining a permit if they apply later.

At the end of this period, the permit authority will know of the proposals of the first activity promoter, of any activity promoter who has made a permit application in response to the permit authority's notice, and of any other activity promoter who has co-incidentally applied for a permit or Provisional Advance Authorisation of its intention to work in that part of the highway.

To co-ordinate those activities, the permit authority may now issue permits stating when each of those activities may begin. Authorities should do this as quickly as possible.

No other activity promoter may now begin any activity (other than exempted activities or activities to which an authority has given consent - see 8.5.3) until the restriction has expired.

After the end of the notice period and before all the activities have been completed, the permit authority may give a direction imposing the restriction. It must copy the direction to all parties to whom it gave its original notice and place a copy on the register using the next available ASD update.

If the substantial activity which triggered the restriction was substantial road works and these have not started within six months of the proposed date, or within six months of the completion of any other activities, such as utility street works, that were carried out as a result of the notice, the notice ceases to be valid. A restriction will not be created, as the process would need to be repeated.

Once the substantial activity is completed, the authority should give a further notice to the parties mentioned above stating that the activity has been completed and that the restriction is in force. This action should be prompted by the works closed notice for the substantial activity to the parties listed above. Once the restriction is in force, no activities may be undertaken in the street, except as detailed in 8.5.

8.4 Duration of Restrictions

Durations of restrictions depend upon the type of activity carried out and the impact it has on the travelling public and the local neighbourhood. Longer restrictions will apply where streets, or parts of streets, have been newly constructed, reconstructed or resurfaced, as set out overleaf:

| Table 5. Duration of Restrictions | | |
|---|--|--|
| Street (Including Footway, Cycleway etc) | | |
| | Traffic-Sensitive or Reinstatement Category 0, 1 & 2 | Reinstatement Category 3 & 4 and Non traffic-sensitive |
| 1: Reconstructed | 5 years | 5 years |
| 2: Resurfaced including level change | 3 years | 3 years |
| 3: Other substantial road or street works | 1 year | 6 months |
| Combination of 1 or 2 plus 3 | Higher of figures | Higher of figures |
| Customer connections | 20 days | |

Definitions used:

Reconstruction is the removal of some or all of the various layers that make up a road pavement and their replacement, and is used to strengthen the road pavement.

Resurfacing is the removal of the running surface and its replacement to restore surface integrity and skid resistance.

Other substantial road or street works” refers to the effects of substantial street works and substantial road works, such as drainage provision, which leave similar reinstatements to those after undertakers’ works.

8.5 Activities During a Restriction

Activities may be carried out during a restriction if they either fall within the categories of exempt activities or have the consent of the authority.

8.5.1 Exempt activities and reduced restrictions

Activities which are exempt or subject to reduced restrictions are:

- minor activities that do not involve breaking up or excavating in the highway;
- immediate activities;
- customer connections (see 8.5.2 below);
- works to comply with either an improvement notice or prohibition notice issued by the Health and Safety Executive under sections 21 or 22 of the Health and Safety at Work Act 1974;
- works carried out under regulation 16(3)(b) of the Gas Safety (Installation and Use) Regulations 1998;
- works carried out to comply with approved programme permitted under Regulation 13A of the Gas Pipelines Safety Regulations 1996 (SI1996/825, as amended by SI2003/2563) that could not have been identified before the restriction began;
- activities required to expose equipment covers and manhole covers

buried during the substantial street or road works.

The normal application rules appropriate to the activity concerned must be followed.

8.5.2 Customer connections

If an undertaker receives a request for a new customer connection after the period for response to a section 58 or section 58A notice of restriction, and it is not possible to carry out the necessary works before the restriction comes into force - then an embargo on carrying out those works shall apply for 20 working days immediately following the completion of the substantial street or road works, as indicated in Table 5.

Before applying for the appropriate permit the undertaker must contact the street authority to discuss its proposals and the extent of the works in the street. The application must contain the information discussed, the fact that it is a customer connection, and the name of the permit authority officer who has confirmed the proposal.

It is expected that the minimum works will be carried out to provide the connection but it should be recognised that in some circumstances, extra work may be required to minimise disturbance to the restricted surfaces.

8.5.3 Exemption by consent

The regulations provide for activities that are not covered by the exemptions in 8.5.1 and 8.5.2 to be carried out during a restriction with the consent of the permit authority. There may be circumstances where wider considerations make it appropriate for the authority to grant such consent.

8.5.4 Permit applications during restrictions

The permit application that an activity promoter must give for an activity that he wishes to carry out during the period of a restriction imposed under section 58 or section 58A of NRSWA depends upon whether:

- a) the activity comes within the scope of any of the specific exemptions listed in 8.5.1 and 8.5.2; or,
- b) the permit authority's consent is required.

In (a), the ordinary rules appropriate to the activity concerned, set out in Chapter 10, must be followed.

In (b), an application for consent should be made, specifying, in addition to the normal activity information, the grounds upon which consent is sought. Once consent is granted, an application for a permit must be made in the usual way. The permit authority would then deal with this, again in the usual way. If the permit authority refuses consent then the promoter may appeal if it considers this to be unreasonable.

The exemptions described in 8.5.1 exemplify the balance that must be achieved if the co-ordination aspects of the legislation are to be successful. In considering applications for consent from activity promoters, permit authorities must take account of the needs of the promoter's customers. Equally, activity promoters must recognise the needs of road users and the need to ensure best value for money in highway expenditure. The key test is whether the promoter could reasonably have foreseen the

eventuality during the notice period and/or could reasonably be required to postpone the activity until the end of the restriction.

Promoters should do their utmost to give details of their plans for activities in affected streets as early as possible within the notice periods, and to complete their activities before any specified starting date or as specified in the permit. Nevertheless, if an activity overruns, or has to be carried out after the specified date, it would be sensible from the point of view of road users for these activities to be accommodated before completion of the substantial activity concerned.

8.6 Policy Guidance

The appropriate use of restrictions will not only protect streets where notice is served, but should also encourage permit authorities and promoters to plan and amend their programmes in a way which minimises inconvenience for the public.

A restriction under section 58 or section 58A cannot be made if substantial activities have started without a notice under section 58 or section 58A having been given. However, even if activity promoters are not aware of a restriction, they are strongly recommended to approach the authority to establish whether a restriction is in force, if a street in which they propose to carry out works, has been newly constructed, recently reconstructed or resurfaced. Activity promoters should not assume that they can automatically break open that street. It may be that the ASD entry has not yet been posted or that a particular activity promoter was not sent the relevant notice under section 58 or section 58A and there may be a restriction in force.

If having received a notice, the authority realises that there is a restriction in place then they should advise the activity promoter of this fact as soon as possible.

8.7 Dispute Resolution

Disagreement between the activity promoter and the permit authority should be resolved by means of the dispute resolution procedures set out in Chapter 14.

8.8 Revocation of Restrictions

Restrictions may be revoked by the permit authority at any time. The permit authority should do this by sending a revised section 58 or section 58A notice to the promoter(s) concerned, informing them that the original restrictions are now revoked. In issuing restrictions the authority must give the same consideration to the situation as when issuing the original restrictions and include the reasons for the revocation.

9. ACTIVITY CATEGORISATION

9.1 Registerable Activities

9.1.1 Registerable activities include:

- street works_ - work on plant and apparatus in the street by undertakers; and,
- works for road purposes - maintenance and improvement works to the road itself carried out by, or on behalf of, the highway authority; and,
- major highway works.

A detailed description can be found in the Technical Specification for EToN.

All activities covered below have to be registered. The authority shall record activities for which applications for permits and provisional advance authorisation has been made by promoters in accordance with the regulations and Chapter 10 of this Code. Activities, for which applications for permits and Provisional advance authorisation are not made in this way, are unlikely to be picked up by the authority. It follows that only those activities for which such applications have been made will in fact be registerable. Although the definitions are different legally, to all intents and purposes they are the same thing in practice. However, under a permit scheme, activities for which a permit has not been sought or given in the terms applied for cannot be carried out without committing an offence (see Chapter 17).

The permit authority's network management duties require it to hold information on the activities carried out on its street network

The term "registerable activities" corresponds to what may be "specified works" under the regulations. The following activities defined in the regulations as specified works are registerable for all activity promoters and information related to them has to be recorded on the register:

1. all activities that involve the breaking up or resurfacing of any street, (but see below for pole testing involving excavation);
2. all activities that involve the opening of the carriageway or cycleway of traffic-sensitive streets at traffic-sensitive times;
3. all activities that require the use of any form of temporary traffic control as defined in the *Code of Practice for Safety at Street Works and Road Works*;
4. all activities that reduce the number of lanes available on a carriageway of three or more lanes;
5. all activities that require a temporary traffic regulation order or notice, or the suspension of pedestrian crossing facilities;
6. all activities that require a reduction in width of the existing carriageway of a traffic-sensitive street at a traffic-sensitive time.

The following activities are non registerable

1. Traffic Census Surveys

Traffic census surveys have deliberately not been included as disclosure of this information prior to a census taking place can encourage a change to the

normal pattern of traffic flows.

2. Pole testing

Pole testing involving excavation only requires registration and therefore needs a permit; as would be the case with other excavations, when one or more of rules 2 – 6 above apply. However in all circumstances the work must be registered using section 70 (3) under NRSWA for the purpose of reinstatement inspections within 10 days of completion.

3. Fire service vehicles

Fire service vehicles occasionally need to be parked adjacent to fire hydrants when these are being tested. These operations are exempt from the requirement to obtain a permit, provided the work is done outside traffic-sensitive periods.

Bar holes

Bar holes are used to detect and monitor gas leaks. When bar holes are carried out and it is known that no further activity in the street is required (such as when a gas leak is reported but none detected), a registration under s70 (3) of NRSWA should be sent within 10 days, once final monitoring checks have been established. The bar holes will count as a single excavation and reinstatement for registration purposes.

An application for a permit should be made within two hours of the commencement of any other registerable activity (i.e. excavation, or any other activity defined above) associated with the bar holes. In this latter case, these bar holes will not count as further excavations and reinstatements for the purposes of registrations but will be incorporated with the registerable activity.

All bar holes must be reinstated and registered when work on site is complete.

Street lighting

The definition of works for road purposes may include some works carried out by undertakers, such as street lighting. It is for activity promoters to ensure that permit applications for such activities are made and that the activity is registered, as appropriate. Responsibility for new connection works to the highway authority asset resides with the highway authority.

Fault repairs and works carried out for any other authority, such as District or Parish Councils, are not works for road purposes. They should be treated as street works and must follow the normal procedures.

9.2 Activity Categories

9.2.1 Major activities

Definition

Major activities:

- have been identified in an activity promoters' annual operating programme or are normally planned or known about at least six months in advance of the proposed start date for the activity; or,
- require a temporary traffic regulation order (i.e. not a temporary traffic notice)

under the Road Traffic Regulation Act 1984 for any other activities other than immediate activities. (see 19.1); or,

- have a duration of 11 days or more, other than immediate activities.

Application periods

Regulations and statutory guidance provide that permit schemes should require promoters to apply for both a Provisional Advance Authorisation at least three months in advance of the activity and a permit ten days before the activity is due to start.

9.2.2 Standard activities

Definition

Standard activities are those activities, other than immediate or major activities, that have a planned duration of between four and ten days inclusive.

Application period

A permit application for standard activities is required ten days before the proposed start date.

9.2.3 Minor activities

Definition

Minor activities are those activities, other than immediate or major activities, where the planned duration is three days or less.

Application period

A permit application for minor activities is required three days before the proposed start date.

9.2.4 Immediate activities

Definition

Immediate Activities are either:

- emergency works, which are defined in section 52 of NRSWA, are works required to end, or prevent, circumstances, either existing or imminent, that might cause damage to people or property. This applies to both street works and works for road purposes which fall within the definition of activities. The term also includes activities not falling within that definition but which cannot be severed from those that do - such as activities away from the emergency site that are necessary to shut off or divert a supply. Remedial works to dangerous defective reinstatements are classed as emergency works (but there will be a need to cross reference these to the permit given for the parent activity); or,
- urgent activities are defined in the regulations as activities:
 - (a) (not being emergency works) whose execution at the time they are executed is required (or which the person responsible for the works believes on reasonable grounds to be required):

- (i) to prevent or put an end to an unplanned interruption of any supply or service provided by the promoter;
 - (ii) to avoid substantial loss to the promoter in relation to an existing service; or,
 - (iii) to reconnect supplies or services where the promoter would be under a civil or criminal liability if the reconnection is delayed until after the expiration of the appropriate notice period; and,
- (b) includes works that cannot reasonably be severed from such works.

Application period

Regulations and statutory guidance provide that permits schemes should require promoters to apply for both a Provisional Advance Authorisation at least three months in advance of the activity and a permit ten days before the activity is due to start.

Applications for immediate activities must be given as soon as reasonably practicable and, in any event, within two hours of the activity starting. Where immediate activities are identified and undertaken outside the normal working day the application should be made within two hours of the start of the next working day, i.e. by 10:00, except where the authority has indicated that it can receive and respond to such communications outside normal working hours.

Applications for permits for immediate activities must explain why they fall within the definition.

Burden of proof

If a permit authority disputes whether an activity, or part of an activity, is immediate, the promoter must demonstrate conclusively that it is. Those elements of the activity, which could be subject to the normal application period, cannot be included in the 'immediate' category.

Severable works

The definition of emergency works in section 52 of NRSWA provides that items of work which "cannot be reasonably severed" from the emergency works are regarded as part of them. The same test applies to urgent works.

Work which can be "reasonably severed" from the immediate activity must therefore be regarded as separate activities and classified accordingly.

Typically, immediate activities shall consist only of a repair to end the emergency, or restore the service, and complete the necessary reinstatement. Subsequent activities to provide a permanent solution are "severed" and subject to a permit application.

If the promoter leaves site after dealing with the immediate problem, including carrying out an interim reinstatement and closing down the site, and returns later for further activities - it is clear that these are "severed". However, even where activities are continuous, the later stages are not necessarily part of the immediate activity.

9.3 Remedial Works

9.3.1 Definition

Remedial works correct defects identified in accordance with the *Code of Practice for Inspections* and associated regulations.

The promoter of these activities is not required to apply for a Provisional Advance Authorisation, even if the activities are of such magnitude as to be classed as major activities. They will need to be cross-referenced to the original activity promoter reference number. Those remedial works to remedy dangerous defects will, of course, be categorised as immediate activities.

The procedures below outline how a promoter notifies a permit authority of remedial works. They do not affect the power of the authority to remove a danger arising from a defective reinstatement.

9.3.2 Application requirements

The permit application requirements for remedial work to an interim or a permanent reinstatement are the same as those for all other types of activities.

To assist co-ordination, the application should use the original activity reference number. If the original application cannot be found, a new activity reference number will be needed, highlighting that these are remedial activities.

Under section 72 (3) of NRSWA, an authority can require remedial works to be carried out within seven days or such other periods as may be prescribed.

If the promoter discovers the necessity for remedial works the following action should be taken:

- if the reinstatement is dangerous, the promoter should take the necessary action and seek a permit for immediate activities from the authority; or,
- for all other remedial work, the promoter should agree the scope of the activity and timings with the highway authority, before applying to the street authority for a permit.

The promoter is encouraged to make the interim reinstatement of the original works permanent while carrying out remedial works.

If the authority discovers the necessity for the remedial works the actions set out in the *Code of Practice for Inspections* should be followed.

All the other application information and processes that are required for activities will also be required for remedial works.

9.4 Action on Unauthorised Activities

Section 66 of NRSWA requires promoters to complete their activities with all such dispatch as is reasonably practicable. The factors of causing obstruction and lack of dispatch by promoters which would have triggered action under s66 of NRSWA should be covered by the times and conditions attached to permits. The permit durations should be set to reflect efficient working, and the conditions relating to ways of working

and traffic management should reflect an approach that involved minimum disruption. Thus working out side the permit or its conditions should cover the original s66 situation as well. Under permit schemes s66 is replaced by equivalent powers. Where a permit authority believes that a promoter is operating without a permit or outside of its permit conditions, it may issue a notice requiring them to remedy the situation or to remove the activity.

If such a notice is issued, the promoter must comply within the period specified in the notice, such period to be determined as reasonable in the circumstances. That may mean less, perhaps much less, than the 24 hours in s66 in some cases but each case must be considered on its merits. Sometimes 24 hours is too long to wait to resolve a problem causing severe problems on the roads but there may be practical constraints on what action can be taken quickly. Authorities should take account of these factors in deciding what an appropriate response time should be.

If the promoter fails to take action within the specified period, the authority may take action itself and recover from the promoter the cost of doing so. Where a promoter is co-operating with the authority in their coordination duties, progress of any activity should be discussed and agreed in such a way that the need for using these powers is the exception.

10. HOW TO MAKE PERMIT APPLICATIONS

10.1 General Principles

10.1.1 Purpose

Where a permit scheme is in operation, any promoter of an activity prescribed in the permit regulations, who wishes to carry out such an activity must obtain a permit from the permit authority. This will allow the promoter to:

- a) carry out the specified activity
- b) at the specified location
- c) between the dates shown; and,
- d) subject to any conditions that may be attached.

All of this information will be included in the permit.

The intention is to better control activities to minimise disruption and inconvenience. It is not to prevent the legitimate right of undertakers and others to access their equipment, nor to prevent necessary maintenance to the highway itself by highway authorities.

10.1.2 Differences from NRSWA

The key differences are:

- a requirement to obtain permission – effectively booking a time slot, rather than informing the authority of the intention to work
- the start and end dates are fixed on category 0,1, 2 and traffic-sensitive streets - a permit is not valid before the given start date nor once the end date is passed
- on category 3 and 4 streets that are not traffic-sensitive, some flexibility will be allowed over the start date although the duration will be fixed.(see 10.13.2.)
- times at which work can be carried out are more strictly controlled
- conditions affecting the way in which work is carried out can be attached to permits.

10.1.3 Types of permit

There are two types:

- “Provisional Advance Authorisation” – effectively an early provisional permit issued before the final details of an activity have been worked out. Used only for major activities, i.e. those which are large and/or likely to be more disruptive. For street works these equate to section 54 notices under NRSWA.
- “permits” – full permits with final details - for all registerable activities. These are similar to section 55 notices under NRSWA

10.2 Requirements for Permit Applications

The timing of applications will vary according to the proposed activity, as indicated in 9.2 and the table in 11.3. However, permit approvals reference conditions under which the work may take place, so it is in the best interests of the promoter to contact the permit authority early. That way conditions can be discussed and, if possible, an agreement can be reached so that the application is approved quickly. Early applications will improve the co-ordination process and enable the permit authority to better control all the activities that take place on the highway. This is particularly relevant to major works and lies behind the provision for forward planning information of such activities outlined in Chapter 2.

The permit authority should ensure that existing and potential works promoters have the contact details of the person dealing with applications.

Where an activity crosses the boundary between permit authorities, the works promoter must apply for a permit from each. (See 10.6.) Where an activity crosses the boundary between a permit scheme and an area where noticing under NRSWA is used, both systems will need to be invoked. However, fees are payable only to permit authorities. In both cases, early discussion with all involved will help to avoid any conflicting requirements. Co-ordination will also be necessary where an authority is operating permits on some streets and retaining the NRSWA notification regime on others.

10.3 Method of Making Permit Applications

Permit applications may be made electronically or in paper form, i.e. by fax, post or hand delivery and must comply with the requirements set out in the Technical Specification for EToN. For this purpose only, an application given by fax is regarded as a paper application and must comply with the conditions set out in that specification. By April 2009 all activity promoters should make electronic applications.

Other activity promoters, such as those operating under section 50 of NRSWA, will be encouraged to move to an electronic system within five years of the publication of this Code - assuming that the permit scheme is extended to encompass other promoters. Authorities may wish to provide facilities to allow on-line provision of information by those operating under section 50. After this time, regular applicants will be allowed to make paper applications, only if the electronic process is unavailable. The paper application option will remain open for one-off users.

Recipients of certain applications or copies of applications, e.g. transport authorities or frontagers, are unlikely to have access to EToN and therefore such applications will have to be given either by e-mail or more likely by post.

10.4 Content of Permit Applications

The definitive format and content of both paper and electronic permit applications is given in the Technical Specification for EToN, and all applications must comply. The system will be able to print a paper application - to emphasise that from 2009 all applications should be electronic. Those using paper systems must take particular care to code permit applications appropriately.

The description of activities should be in plain English without any industry specific jargon. A standard description used consistently, with added text for exceptions, allows quicker analysis. This would result in clearer information and help authorities to co-ordinate activities.

For instance standard descriptions and durations might be:

- Standard descriptions – for example, '250m lay main 300PE', or, '700m lay duct 6-way'; and,
- Standard durations – in days, for each activity.

Promoters and authorities are encouraged to agree standard descriptions locally that can be used by all activity promoters.

Agreed standard durations for routine jobs would help focus co-ordination on those works likely to be of greater impact, such as those in busy streets or works that need extending.

10.5 Service of Permit Applications

The application process starts when the recipient receives the application, not when it was sent.

With electronic transfer receipt should be almost instantaneous and it is assumed an application has been received at the time it was given, unless there is evidence to the contrary. It is good practice to set up audit trails, to demonstrate proof of writing, and systems to record delivery.

A new EToN system based on XML web services has been implemented in conjunction with the publication of this Code and the Regulations (see the Technical Specification for EToN). Activity promoters and permit authorities may provide a different address for specific type of application or notice. It should be noted that electronic transfer of inspections data will continue to use batch txt files and FTP (EToN 3.0) for the time being.

Where, after three attempts to give an application or a notice by EToN (duly recorded by the person serving the application or notice), the application or notice cannot be given (for example because the distant server is down), notification should be given by telephone or fax for immediate activities with formal EToN application or notice following as soon as reasonably practicable. Other applications or notices may be given by other electronic means (e.g. e-mail or fax) or may be sent by post or delivered or by any other method agreed. Following recovery of service a copy of the application or notice should then be sent through EToN to ensure information on the works are correctly recorded in the register. See Technical Specification for EToN

It is recommended that permit authorities include in their ASD alternative means for serving applications and notices should the XML web server be unavailable. These may include e-mail addresses, or fax and phone numbers, or postal and delivery addresses, as appropriate. Activity promoters may wish to provide alternative addresses to use should EToN be unavailable in their ODD submissions.

If applications or notices are sent by fax, it is assumed that they have been received when the transmitting equipment records satisfactory completion of the transmission.

It is not guaranteed that applications or notices sent by first-class mail will be received the following day. Promoters should take this into account.

10.6 An Application Shall Contain Only One Street

Each application shall contain information about activities in only one street. To improve co-ordination, projects covering more than one street must cross-reference all related applications. This is particularly important when applying for Provisional Advance Authorisations. Fees for projects which involve several permits would be discounted for applications submitted together. See Chapter 15. Under no circumstances will an application containing activities in more than one street be acceptable.

Where a project with activities in more than one street straddles the boundary between authorities, permit applications, including those for Provisional Advance Authorisation, should be submitted to each authority. Furthermore, the project reference should be included on every application so that the authorities can consider the impact and co-ordinate the activities together.

10.7 Applications to Interested Parties

Parties other than the permit authority may wish to be informed about activities on a street. These could include adjacent authorities who need to know what is happening on adjacent networks in order to carry out their network management duty, and utility companies who want to know what is going on in streets where they have vulnerable plant and equipment. Such parties should make sure that their interest is entered in the ASD. See 4.3.1 for registering interest.

Where the ASD indicates other interested parties, permit applications and any response to them should be copied to those parties. Electronic systems meeting the Technical Specification for EToN should deal with this automatically. However, some interested parties, section 50 licensees for instance, may not have access to the electronic systems so they should be sent paper copies.

In addition, the permit regulations amend NRSWA sections 88, 89 and 93 which along with s90 and s91 deal with notifications to **bridge, transport and sewer authorities** to ensure that the same consultation takes place prior to a permit application as under the notice regime. Highway works promoters should follow equivalent processes for activities under a permit scheme in such situations, and state that they have fulfilled the requirements of these sections in their applications.

The consultation requirements with **Network Rail** are the same as with the NRSWA. Promoters should make themselves aware of the requirements for working adjacent to **structures**, particularly those of Special Engineering Difficulty, as set out in Appendix D.

10.8 Provisional Advance Authorisation Applications

The promoter shall apply for a “Provisional Advance Authorisation” at least three months before the proposed start of major activities. This replaces the Advance Notice under section 54 of NRSWA. The rules for such applications are found in 10.2 to 10.6 - also see the table in 11.3.

A Provisional Advance Authorisation lets the promoter know that his activity is approved and enables him to provisionally reserve occupation of the highway. Therefore an application for a Provisional Advance Authorisation must always specify proposed start and end dates. However, as it may be difficult to be certain of the start date three months before the event, the proposed start date is regarded as provisional and may be amended in the application for a final permit - subject to 10.13. For more information, please see the timelines in the Technical Specification for EToN.

The information to be supplied for an application for a Provisional Advance Authorisation are:

- location of activity
- proposed start and end dates
- an outline description
- times of working, including hours of the day and any weekend provisions
- the road space occupancy
- method of working
- traffic management.

These are clearly set out in the Technical Specification for EToN.

Standard, minor and immediate activities do not require an application for a Provisional Advance Authorisation.

10.9 Permit Application for Major Activities

The promoter must apply for a Permit at least ten days before the activity is due to commence, as set out in the table at 11.3. This application will need to include the proposed start and end dates. If these are different from those in the Provisional Advance Authorisation, the application should include a full justification for the change.

10.10 Permit Application for Standard Activities

The works promoter must apply for a permit at least ten days before the activity is due to commence, as set out in the table at 11.3. The application must include a description of the proposed activity and the proposed start and end dates.

10.11 Permit Application for Minor Activities

The works promoter must apply for a permit at least three days before the proposed start of the activity, as set out in the table at 11.3. The application must include a description of the proposed activity and the proposed start and end dates.

10.12 Permit Application for Immediate Activities

The promoter must apply for a permit within two hours of the work starting. Permits for immediate activities can contain the same conditions as permits for other activities - subject to obvious variations, such as omitting when activities may start. Please note that exact location may not be known when the application is made. (See 9.2.4 and 12.2.5).

Permit authorities can designate streets that are particularly vulnerable to works-related congestion on the ASD (see 5.7). A marker on the ASD indicates that the authority wants early warning of immediate activities on these streets - see 4.3. Promoters carrying out such activities shall telephone a number specified by the permit authority immediately after the activity has commenced and before the application is made. Only those category 0-2 and traffic-sensitive streets that are most susceptible to unplanned disruption should be designated.

10.13 Permit Start and End Dates

A permit will allow an activity to be carried out for a specific duration (in days) between the start and end date on the permit. A promoter working outside those dates would not have a valid permit and potentially would be committing an offence. It should be noted that if the permit scheme states that the work should start on a Monday and finish on a Friday, the weekend cannot be used as additional days without the express approval of the authority through a permit variation.

10.13.1 Category 0-2 and traffic-sensitive streets

In category 0-2 and traffic-sensitive streets the duration of the activity will exactly match the time from the start date to the end date, for example: start date Wednesday 1st June, end date Friday 10th June, duration eight (working) days. The permit start date will be the proposed start date of the activity. If the activity cannot begin on the permit start date, the promoter should inform the permit authority [on the previous day by telephone]. There is no automatic extension of the permit in these circumstances. If the promoter thinks that it could still complete the work before the permit end date, then they could begin the activity on a subsequent day, submitting a start of works notice under section 74 of NRSWA.

If the promoter could not complete the activity before the permit end date, it would need to apply for a permit variation. This would be required even if the extra days were at a weekend (in the above case the permit expires at midnight on Friday night). A permit authority may or may not agree to an extension, depending on the circumstances, and the promoter may be subject to over-run charges.

10.13.2 Category 3 and 4 non-traffic-sensitive streets

In category 3 and 4 streets that are not traffic-sensitive, the permit will be issued with a start and end date and duration for the activity which is set as a condition. The start date of the permit will be the proposed start date of the activity. However, because both competition for space and the expected level of disruption is likely to be lower on less busy streets, there will be flexibility on the start of the activity - a "starting window" - equivalent to the validity period on a NRSWA notice. The starting windows are:

- 5 days for major and standard activities
- 2 days for minor activities.

The permit end date will therefore allow for the set duration to be completed if the activity starts on the last day of the starting window.

Assuming that the example above relates to a standard activity for which the starting window is five working days, the activity may begin on any day between Wednesday 1st June and Tuesday 7th June without further notification to the permit authority. If the activity started on the last day of the window, Tuesday 7th June, the end date for the permit would be Thursday 16th June.

This does not, however, mean that the promoter can work on any days between the permit start and end dates. The duration applies to continuous working days and once the work starts the promoter has only the successive working days duration in which to complete the activity. The normal working day rules apply, i.e. weekdays, although there may be conditions that affect the ability of a promoter to make use of weekends for works.

Once the end of the duration period is reached, even if the end date on the permit has not been reached, the promoter must have applied for and obtained a variation if he wishes to carry on working. Without that he will be in breach of a condition (i.e. duration) or, if the activity started on the last day of the window and the end date on the permit has been reached, he will be working without a permit. Either way he will be committing an offence.

When he did begin the activity the promoter would have to submit the section 74 Start of Works Notice setting out the actual start and estimated date for the end of the activity. The duration must be the same as that given in the permit.

10.14 Information Required in a Permit Application Including Provisional Advance Authorisation Applications

In deciding whether to require any additional conditions to be attached to a permit, the permit authority will need to consider the information that has been provided in support of the application. The rest of this chapter sets out the information that must be supplied. It is recognised that the full information may not be fully known at the time an application for a Provisional Advance Authorisation is made. However, activity promoters should make every effort to provide the most accurate information available at each stage.

10.14.1 Description of activity

A detailed description of the activity must be provided to allow the permit authority to assess its likely impact - similar to that already required under NRSWA.

10.14.2 Location

Promoters must give an accurate location based on National Grid References (NGRs), including one in the centre of the excavation for small excavations and one at each end of trenches, along with the dimensions of the space taken up by the activity in the street.

Promoters applying for permits for immediate activities should do so within two hours of starting work. Where they find that the location in which they have started digging is not where the leak (or other emergency) actually is, a permit is still required because they have broken open the street. The promoter will have to apply for a permit variation for:

- the first excavation in each further 50 metre band away from the original hole in

the same street, i.e. 50-100 metres, 100-150 metres etc. Separate variations would be required for bands going in opposite directions.

- If the search carries into a different street, or a new USRN (including if the street changes to a different authority), then a separate permit application is needed.

10.14.3 Timing and duration

Each application for a permit must include proposed start and end dates. For traffic-sensitive streets, details of the times of day the activity is to be carried out must also be provided, including any proposal to work at night. If the activity promoter proposes to undertake activity on weekends or Bank Holidays to speed up the activity and reduce disruption, then they must also say so. Permit authorities will need to take all this information into account when applying conditions to the permit.

10.14.4 Illustration

Activity promoters may need to provide an illustration of the activity. It is particularly important that an illustration is provided where the activity is significant in terms of potential disruption due to the position and size of the activity. This may include more than major activities - a small excavation at a critical junction may be much more disruptive.

The illustration should include details of the activity, whether it is likely to affect more than one lane of the street and, if possible, a disruption effect score. (See Appendix G). Details of what this might consist of and how it should be transmitted can be found in the Technical Specification for EToN, but plans, digital photographs and similar would normally be required. Activities on those streets, or parts of a street, subject to a Special Engineering Difficulty designation will in any case require a plan and section.

10.14.5 Technique to be used for underground activities

Details of the planned techniques, such as open cut, trench share, minimum dig technique or no dig must be provided.

10.14.6 Traffic Management and Traffic Regulation Orders

Details of traffic management proposals will be required. Any requirement for action by the local authority such as the need for Traffic Regulation Orders (TROs), lifting of parking restrictions and approval for portable light signals must be included and allowance must be made for the additional costs associated with them. See Chapter 19. Works promoters should also familiarise themselves with the length of time that the relevant traffic authority needs to process such orders or approvals and build that into their application process i.e. they should apply earlier. It is expected that this will be at least six weeks beforehand. Activities requiring a TRO are classified as major and will require a Provisional Advance Authorisation. For other activities the minimum permit application period only goes up to 10 working days (i.e. two weeks).

10.14.7 Depth

Activity promoters must provide their best estimate of the excavation depth. While this might be expressed as a range, it should nonetheless provide a meaningful indication of the nature and extent of activity involved.

10.14.8 Reinstatement type

The application should wherever possible indicate whether the activity is intended to be completed with interim or permanent reinstatement or a mixture of both. If it is the latter, then details must be provided as to where interim or permanent reinstatements will be completed within that permit. This may prevent the need for a different activity Closing Notice under the provisions of section 74 - see 16.9 and 16.10. However, if there has been a change which has not hitherto been recorded, that difference in closure notice may still be required, although such a change would be a variation to the permit for which approval should have been sought.

10.14.9 Inspection units

The application must state the provisional number of estimated inspection units appropriate to the activity, in accordance with the rules laid down in the *Inspections Code of Practice* and associated regulations.

10.14.10 Contact person

The application must include the name and contact details of the person appointed by the activity promoter to deal with any problems that may occur during the activity, including any provision made for out-of-hours contact by the promoter.

10.15 Early Starts

An activity must not start before the expiry of the application period, except where an early start has been agreed with the permit authority, and any other interested parties. Such permission should not be unreasonably refused.

A promoter may request an early start before or after applying for a Provisional Advance Authorisation or a permit application as appropriate. Where an early start has been agreed the promoter shall submit a variation to the permit, or in the case of a Provisional Advance Authorisation include the revised dates on the application for the permit. The authority should consider waiving the fee for such a variation in these cases.

10.16 Error Correction

Where a recipient identifies an error in data recorded in, or submitted for recording in, the permit register, he will contact the activity promoter to discuss and agree the corrections to be made.

Where the originator identifies an error, he will contact the recipient to discuss and agree the corrections to be made. It is strongly recommended that if an error has been identified on an application, the originator should submit a permit variation request by the end of the next working day following the agreement of the correction. This permit variation request should include the corrected data and the name of the person in the recipient organisation who agreed that the correction should be made. The error correction process is described in the Technical Specification for EToN.

This procedure cannot be used without the prior agreement of both parties. Its purpose is simply to ensure that the information recorded in the register is correct and useful to the authority in carrying out its co-ordination duties. The system has been set up so

that this error correction sits alongside the original information rather than overwriting it.

Again in such cases it is recommended that the authority consider waiving the fee for such a correction.

11. ISSUE OF A PERMIT AND CONDITIONS THAT MAY BE APPLIED

11.1 General Principles

11.1.1 Approved permit

If the permit authority is content with the proposal it will issue a permit within the response times detailed in the table at 11.3. The permit shall contain the details provided in the application, including any associated documentation such as drawings, and any conditions imposed by the permit authority, see 11.4. A permit shall be issued in accordance with the formats given in the Technical Specification for EToN.

11.1.2. Grounds for refusal

Whilst a permit authority cannot refuse legitimate activities, it can refuse a permit application if elements of the proposed activity, such as timing, location or conditions, are not acceptable. In such cases the authority should contact the promoter as soon as possible, and within the period specified in the table at 11.3, to explain precisely why the application is not satisfactory and which aspects need modification. If agreement can be reached, the applicant can make a modified application with conditions reflecting that agreement.

Where a modified permit application is submitted, the date of the original application should be used for reckoning time periods for permit applications. If agreement cannot be reached in the time available, the permit authority will have no option but refuse the permit and require the promoter to make a new application, which would then be considered in the usual way.

11.1.3 Right of appeal

The promoter has a right of appeal, detailed in Chapter 14, if it is unable to reach agreement with the authority over the terms it requested or the conditions attached. In the case of immediate activities it may be that work has to stop until the issues are resolved.

11.1.4 Response times

It is essential that a permit authority replies to permit applications within the given response times. If it fails to do so, the permit is deemed to be granted in the terms of the application. It is recommended that authorities ensure that IT systems and internal processes alert them to any applications approaching the time limit.

11.1.5 Overlapping activities

Where other activities are scheduled to take place in the same street, or other streets affected by the proposed activity, at the same time, the authority may refuse a permit for the period requested but propose to grant it for different times. Information about other activities is available to the promoter through the permit register, so in such situations the promoter should contact the authority to discuss acceptable options before applying for a permit.

11.1.6 Timing and duration

A promoter must ensure that the proposed duration of the activity takes into account both his legitimate need to complete the activity in an efficient and economic manner and the legitimate interests of other users of the highway. The permit authority can query the proposed duration on the grounds that:

- it can be completed more speedily or, that realistically, not enough time has been allowed; or,
- that the specific dates and times proposed may clash with other proposed activities or events which occupy road space, in such a way as to be likely to cause an unacceptable level of disruption.

In these cases the authority should talk to the promoter. Hence, it is essential that the permit application provides the name and contact details of someone able to agree amendments acceptable to the permit authority. The promoter should then submit a revised application against which the authority will be able to issue a permit.

11.1.7 Location of activity

A permit will specify the location where the activity is to take place. An authority may refuse to issue a permit due to the proposed location of the activity. This is intended to provide a similar power to that under section 56A of NRSWA. i.e. where location of a proposed activity is unacceptable to the authority because the street in which the works are proposed is already heavily congested with underground services, or has an important traffic function, yet does not warrant protected street status. Such refusals would only apply:

- in relation to the installation of new apparatus - it cannot be used to require existing apparatus to be moved
- where disruption would be reduced by installing the apparatus in an alternative street
- where it is reasonable to use the alternative street.

The authority should talk to the promoter to see whether another route would satisfy all the requirements.

11.2 Permit Period

11.2.1 Road category

A permit is valid for the period of time given. This will usually, but not always, be the period of time applied for by the activity promoter. On category 0, 1, and 2 roads and traffic-sensitive streets, the start and end of the permit period will match the start and finish dates for the activity. No activity, including delivery and storage of materials on site, may be carried out outside of these times without the further agreement of the permit authority and a permit variation.

Activities on less busy category 3 and 4 and non traffic-sensitive streets will be less disruptive. On these streets the promoter will be allowed some flexibility – an ability to start up to five days later than the permit start date, depending on the category of activity being carried out. However, the permit conditions will fix the duration from the actual start date so that after that time the promoter will be in breach of the permit

conditions or the permit will have passed its end date. Authorities will need to take this flexibility into account when co-ordinating activities. See 10.13 for more detail.

11.2.2 Days of work

The start and end dates should be in calendar days, even though many aspects of permit schemes will operate on working days. This should prevent ambiguity as to whether the permit is valid, even at weekends or on Bank Holidays. This is important for the operation and enforcement of permit schemes given the penalties for working without a permit.

The definition of “permit” in the regulations indicates that a permit must contain details of the duration for which the activity is authorised. That duration may coincide with the validity of the permit, i.e. the time between the start and end dates (inclusive) on the permit, but does not have to do so. The duration may also coincide with the “reasonable period” for the purposes of section 74 of NRSWA but, again, does not necessarily do so, as the regulations makes clear.

If the permit allows working at weekends or on Bank Holidays, then the permit start and end dates should also accommodate that, even if those days do not count towards, say, the reasonable period for section 74 of NRSWA or the starting window.

11.3 Issuing Permits and Response Times

Permits will be issued electronically using the formats given in the Technical Specification for EToN to ensure easy automation. If the electronic system is down or unavailable for any reason then permits can be issued by fax or post. Permits must be given a unique reference, which must be displayed on the site information board. Variations to permits must be denoted by the use of the same unique reference with a suffix to denote the variation. Cross-references to other linked permits should also be given on the permit. The form of the permit is given in the Technical Specification for the EToN system.

Remedial works will require a new permit. This permit must be cross-referenced to the permit for the original activity.

It is essential that authorities act proactively in running a permit scheme - authorities should respond to all permit applications within the prescribed periods so as to avoid any doubt as to the legality of works.

| Table 6. Application and response times | | | | | | |
|---|--|------------------------|--|--|------------------------|--|
| ACTIVITY TYPE | Minimum application periods ahead of proposed start date | | Minimum period before permit expires for application for variation (including extension) | Response Times for issuing a permit or seeking further information or discussion | | Response times to applications for permit variations |
| | Application for provisional advance authorisation | Application for permit | | Application for provisional advance authorisation | Application for permit | |
| Major | 3 months | 10 days | 2 days or 20% of the original duration whichever is longest | 1 calendar month | 5 days | 2 days |
| Standard | n/a | 10 days | | n/a | 5 days | |
| Minor | n/a | 3 days | | n/a | 2 days | |
| Immediate | n/a | 2 hours after | | n/a | 2 days | |

11.4 Conditions

11.4.1 General Principles

The permit must specify the activity it allows in detail. Much of this information will be drawn from the application. As a minimum, any constraints in the original application should be reflected in conditions attached to the permit. For example, if the activity is in a street which is traffic-sensitive in some places and/or at some times and the application stated that the activity was to be outside the traffic-sensitive places and times, then this should be a condition of the permit. If the activity then strays into traffic-sensitive areas and/or times, it will be outside the scope of the permit and the authority will be able to take appropriate enforcement action.

A permit authority should consider the proposed activity's potential to cause disruption. It may need conditions to be attached, which reflect the information provided in the application, such as method of working or conditions related to the road in question such as restricting night time working because of residential properties.

The authority should discuss details of the proposed activity that it is unhappy about with the promoter, and depending on the outcome, it may then choose to refuse to issue a permit, identifying conditions that should be included in the next application

The following section details the range of conditions which can be applied to permits. These are national guidelines and do not rule out the use of specific local conditions. In setting conditions, permit authorities must act reasonably and take account of how feasible it is for the promoter to comply. Conditions must be pertinent to the reduction

of congestion and disruption and recognise the needs of other users of the highway, and the integrity of the highway itself. Failure to comply may leave the promoter liable to criminal prosecution. Information about appealing against conditions the promoter considers unreasonable is set out in Chapter 14.

The authority should also provide its out-of-hours contact details on the permit.

11.4.2 Condition types

Timing and duration of activity

Conditions may include:

- any date(s) between the start and completion dates on which works should not take place, which may also include periods when not only should no work take place, but that the site should also be cleared of all plant, materials and equipment, including all traffic management measures and signing, lighting and guarding
- the times of day at which works can and cannot be carried out
- whether or not the duration of the work includes, allows for, or requires weekend and Bank Holiday working.

If the activity cannot be completed within the timeframe specified in a permit condition, the promoter will need to apply for a variation, see Chapter 12.

Road space

The amount of space that activities in the highway occupy can have a major impact on congestion and disruption levels. There may be instances when the area required to carry out the actual work is relatively small and, in itself, has little effect on traffic. However, if associated plant and excavated material take up a greater area – possibly resulting in lane restrictions and temporary traffic control measure - the impact could be magnified considerably. The area occupied could be reduced if unnecessary plant and excavated material is removed swiftly.

The following road space conditions could, for example, be attached to the permit:

- whether materials and plant can be stored on site
- the width and/or length of road space that can be occupied - including allowing for signing, lighting and guarding - at any one time, during the period of the works
- the road space that is to be available to traffic (vehicles and/or pedestrians) at certain times of day. This leaves the promoter scope to work out how best to achieve this.

Permit authorities should recognise that any conditions relating to the area of occupancy have to be realistic and allow for works to be carried out in compliance with statutory guidance and codes of practice, especially in relation to safety, and within the restrictions imposed by the available industry resources and technical capabilities.

Traffic management provisions

As explained in 10.14.6, activity promoters will need to submit traffic management

proposals with permit applications. The way traffic is managed during the activity can have a major influence on congestion and disruption. For example a promoter may propose closing a road, and whilst this may be necessary in some cases, in others it may be possible - and less disruptive - to keep at least part of the road open. With smaller scale activities, portable light signals may be sufficient. A permit authority will be able to impose traffic management conditions, for instance:

- that the road, or relevant section, should be closed to traffic during the works
- that shuttle working and/or portable light signals are to be used.

Conditions should be discussed with the promoter first and authorities should not attach them as a matter of course. Furthermore, authorities and promoters should ensure that any conditions allow activities to be carried out in compliance with existing statutory codes and guidance, such as *Safety at Street Works and Road Works*.

All uses of portable light signals require the agreement of the traffic authority. The relevant statutory provisions have been changed in the regulations accordingly. Authorities may decide to give blanket approvals for specified circumstances but otherwise individual approval will be required, as has always been the case for portable light signals at activities across a junction. Requests for the use of portable light signals, or for the suspension of parking restrictions, will be required in a permit application, see 10.14.6.

The requirements for temporary traffic orders can be found at 19.1.

It is possible that traffic management arrangements will change during the course of the activity. These changes can be included in the conditions. It may also be appropriate to require promoters to inform the authority before such changes take place so that it can inform road users and implement complementary traffic management measures to minimise disruption.

Methodology for carrying out activities

The method the promoter proposes to carry out the activity can have a significant effect on the level of disruption. An authority may wish to attach conditions relating to the methodology. In many cases the authority would not be in a position to make an engineering judgement, however it must be satisfied that minimum dig technology can be employed wherever practical to minimise inconvenience to the public and reduce congestion. The authority should be mindful that site conditions may be different to those planned and the promoter may need to revert to other dig methods.

Consultation and publicity

Where activities have the potential to be especially disruptive to local residents, businesses and/or road users, permit authorities can attach a condition requiring the promoter to provide advanced notice to nearby householders or businesses, or to traffic or pedestrians using the road.

In the case of major activities, it should be possible for the authority to make this requirement at the Provisional Advance Authorisation stage, so that the promoter has the maximum time to publicise the activity or carry out a consultation. However, where circumstances change (if for instance other activities in the vicinity become likely), or the proposed activity changes in nature or where activities do not require a Provisional

Advance Authorisation, timescales may be shorter.

Where the promoter has to seek a variation or an extension to a permit, the authority will have a further opportunity to attach such a condition, if the circumstances justify it.

Again, authorities should act reasonably and such conditions should be local to the site and the activity.

It is expected that authorities will also wish to publicise the existence, timing, duration, location and extent of activities that may affect the use of the highway, so it is essential that information provided by activity promoters is accurate. It is recommended that all authorities put a disclaimer on such published information along with the contact details of the activity promoter for interested members of the public.

Environmental conditions

Authorities may need to impose environmental conditions to meet the requirements of 19.8.

Local conditions

An authority may also wish to apply local conditions that are especially pertinent given the nature of the work and the network constraints. Given the availability of the preceding conditions, this provision should be used sparingly, fairly and reasonably and not simply to apply blanket controls on all promoters' activities. The scope for such conditions will need to be incorporated in the permit scheme Order and the requirement agreed with the Secretary of State.

11.5 Conditions for Immediate Activities

The regulations provide that permit authorities can impose conditions on immediate activities to cover the period between starting work on site and receiving a permit.

The permit authority should set out the types of conditions that it will apply to permits for immediate activities on its website and in its application to become a permit scheme operator. Conditions published in this way will necessarily be general but could differ according to types of streets or circumstances, provided it is clear when those circumstances apply. This does not mean that more specific conditions cannot be imposed later, for example, as a result of a site meeting once work has started. Written confirmation of the decisions taken at such a meeting should always be provided before a permit is issued. As far as possible, permit authorities should speed up permits for immediate activities so that any conditions are clearly documented in the normal way.

11.6 Resubmission of Applications

Where the permit authority discusses its intention with the promoter to impose conditions which effectively amend the details of the original application, the activity promoter shall amend and resubmit its application. This would apply say, where the authority makes changes to dates.

If agreement cannot be reached about the conditions applied to the permit then the promoter would have the option of invoking the dispute resolution procedure.

12. VARIATIONS TO PERMITS

12.1 General Principles

Changing circumstances, for either an activity promoter or an authority, may require permits and/or the conditions attached to them to be varied.

The promoter might request the change if new information, events or discoveries on site mean that it needs to alter its original plans. The initiative would come from the permit authority if, for instance, an unexpected event affects the network so that planned activities, or even those under way, have to be reconsidered.

The permit regulations provide for permits and the attached conditions to be varied. This can take place at any time after (and only after) the permit has been issued and even during the activity itself. It is important that variations are sought when changes are needed as working without a permit or outside the conditions is a criminal offence.

A **Provisional Advance Authorisation** cannot be varied. If a full permit has not yet been issued, the promoter should inform the permit authority of the proposed changes and make a revised application for a Provisional Advance Authorisation or permit.

12.2 Variations Initiated by the Activity Promoter

12.2.1 Reasons for a variation - promoters

From time to time an activity promoter will need to apply for a justifiable variation to a permit and/or its conditions, including an extension of the agreed duration. A variation may also be needed because the proposal in the original application was inaccurate or unrealistic.

The permit scheme is not there to prevent necessary activity, so the variation is likely to be granted, although the authority will be able to vary any conditions attached to the original permit or add new ones.

12.2.2 Extensions

A permit authority is under no obligation to let works run beyond the permitted period. The promoter must note that any occupation of the highway beyond the end of the permit may constitute a criminal offence. However, if the authority decides that the proposed extension is reasonable and does not conflict with other planned activities then it should not unreasonably withhold permission.

Activities which exceed the allowable permit duration without good reason will be subject to overrun charges where an authority operates such a scheme. The reasonableness of any extension will be decided in the normal way using the provisions of section 74 of NRSWA. Such an extension is deemed an “overrun” permit in the EToN system to clarify that section 74 charges apply even though a valid permit is in force. In these instances whilst the duration of the permit will be extended, the reasonable period within which the works have to be completed will not. Overrun charges are set out in Chapter 16.

Whilst in many cases the authority will grant the extension to minimise disruption, there may be occasions where the promoter may have to vacate the street to allow other activities to take place and submit an application for a new permit to complete the

activity at a later date.

12.2.3 Fees – promoter initiated variations

A fee is payable for applications for permit variations initiated by promoters. This is subject to the exemptions in Chapter 15.

12.2.4 Applying for a variation

A works promoter may apply to vary an existing permit at any time before it expires as follows:

- where the existing permit has more than 20% of its duration or more than two days to run, whichever is the longer, the promoter must apply for a variation electronically
- in any other case the promoter should first telephone the permit authority to ascertain whether the authority is prepared to grant an extension, and apply - again electronically - only if the authority agrees
- the permit authority will respond to the request within two days of receipt.

If electronic systems fail, then applications have to be sent another way, such as fax or post. These alternatives are the same as with the NRSWA notification system.

The authority may need to investigate before granting a variation so it is strongly recommended that all requests are made as soon as it becomes clear that the activity will overrun or otherwise change.

12.2.5 Multiple excavations

Activities can be particularly subject to change where a promoter has to make several excavations or registerable openings in the street to locate a fault. An example is where gas has migrated along a duct to emerge from the ground some distance from the actual leak. A series of excavations or openings have to be made from where the symptoms are apparent to trace the point of the fault. In normal circumstances every new excavation would require a permit variation. The arrangements below aim to avoid a succession of variations as each hole is dug. Nonetheless it is important that the permit authority knows what is going on so that it can co-ordinate and manage these and other works in the area.

Permit schemes should include the following arrangements for immediate activities requiring a series of fault-finding excavations or openings. As immediate works, the promoter will submit the first permit application containing the location of the initial excavation or opening within two hours of starting work.

- a) For any further excavations on the same street within 50 metres of the original hole, the promoter will telephone the authority with the new location. No permit variation will be needed and no permit charge can apply.
- b) The promoter will have to apply for a permit variation for the first excavation in each further 50 metre band away from the original hole in the same street, i.e. 50-100 metres, 100-150metres etc. Standard variation charges can be applied, although the permit authority may opt to waive such charges as a general rule or for particular cases. Separate variations would be required for bands going in opposite directions.

- c) For additional excavations within each band the promoter will telephone the authority with the new location. Again, no permit variation is needed and no permit charge can apply.
- d) If the search carries into a different street, or a new USRN (including if the street changes to a different authority), then a separate permit application is needed.

If the promoter cannot contact the authority by telephone it should record that and send the message electronically.

12.3 Variations Initiated by the Permit Authority

12.3.1 Reasons for a variation – permit authority

Permit schemes effectively allow promoters to book road space for activities. Once the permit is issued the promoter should have reasonable confidence that the road space will be available to them. Nevertheless, even when a permit has been issued in good faith, circumstances beyond the authority's control may necessitate a change in either the permit or its conditions.

Such changes should happen only when the new circumstances could not have been reasonably predicted and where the impact is significant. For example, extra traffic being diverted onto the road for which the permit has been issued due to another road being closed by floods, burst mains or a dangerous building. If the consequent disruption cannot be mitigated in a better way it may be necessary to vary aspects of the permit such as the time or manner of working.

12.3.2 Reaching agreement

Good co-ordination and co-operation between promoters and authorities should minimise the times that authorities need to vary permits or their conditions but it will not eliminate them entirely.

The permit authority should first contact the promoter to discuss the best way of dealing with the situation whilst meeting the co-ordination duties and other statutory requirements on those involved. Hopefully those discussions will lead to an agreement on the variations required. The authority can then issue a new permit in those terms, or, by agreement, the promoter may apply for a permit variation from which the authority will issue the new permit. The latter may be more appropriate if the promoter needs to reconsider elements of its plans within the parameters agreed with the authority.

If agreement cannot be reached, the authority may issue a new permit on the terms it considers reasonable but the promoter would have the option of invoking the dispute resolution procedure.

12.3.3 Fees – authority initiated variations

No fee is payable for permit variations initiated by the authority, unless, at the same time, the promoter seeks variations which are not the result of the circumstances causing the authority's action. In that case a variation fee would be payable, subject to the exemptions in Chapter 15.

12.4 Suspension, Postponement or Cancellation of a Permit

12.4.1 Suspending or postponing an activity

There is no mechanism for formally suspending or postponing a permit only for varying or revoking them. If the authority has to suspend or postpone an activity for which it has already given a permit but which it intends should happen at a later date, it should use the permit variation provisions, as described above, to change the dates.

If the need for suspension is due to the promoter failing to comply with the permit or its conditions then the authority may use the provisions replacing section 66 of NRSWA, as described in the table in chapter 6, to clear the street.

12.4.2 Cancelling a permit

If the promoter wishes to cancel a permit for which it has no further use, it should use the cancellation notice containing the relevant permit number (see Technical Specification for EToN for more details). There is no fee in such cases. The authority should also use this procedure.

13. CONFLICT WITH OTHER LEGISLATION AND LEGAL LIABILITY

Permit authorities should try to ensure that any conditions applied to a permit do not conflict with the activity promoter's obligations under separate legislation. This could mean, for example, avoiding imposing conditions requiring an activity to be carried out at times which Environmental Health Officers (EHOs) have prohibited under separate requirements because of noise levels.

In many cases, the custodian of the separate legislation may not be the same as the local authority operating the permit scheme. In two tier authorities the District Council will deal with environmental health requirements and the County Council will deal with traffic. Imposing conditions on a permit that would require a promoter to act illegally would, *prime facie*, not be reasonable and leave the authority open to challenge.

The activity promoter should bring such conflicts to the attention of the permit authority. The authority is then responsible for resolving the issue with the other body and amending the permit conditions accordingly. The activity promoter should not be put in a position where it cannot escape being in breach of either permit conditions or other relevant legislation. Indeed the traffic authority should consider entering into broad agreements with the appropriate EHOs on this aspect of activities. Any changes in policy and practice by those EHOs that may occur during the process must be dealt with as they arise.

All parties should promote safe working practices and act reasonably and responsibly. The promoter should raise any safety concerns about conditions with the authority, and if necessary, challenge the condition. It would not be appropriate to try to specify every potential situation in the permit schemes: each will depend on its own circumstances.

Both authorities and activity promoters are advised to obtain their own legal advice on any such potential conflicts. There is a procedure in Chapter 14 for dealing with disputes between promoters and permit authorities that relate to the conditions placed on a permit. The preferred approach is to use that process and not to create another one for a particular type of condition or consequence.

14. DISPUTE RESOLUTION

14.1 Introduction

The TMA provides wide powers to devise a suitable dispute resolution procedure and to identify the stages of the permit application process at which it can be invoked. It is not intended to prescribe statutory dispute resolution procedures at this stage but to build on arrangements which already exist through HAUC at local and national level for resolving disputes.

This Code is intended to provide sufficiently detailed guidance to enable agreement on its operation and implementation to be reached at local level. Permit authorities and activity promoters should always use their best endeavours to resolve disputes without having to refer them to a formal appeals procedure. This might, for instance, be achieved by referring the issue to management for settlement.

14.2 Incidence of Dispute Resolution

Two stages of the permits process provide for dispute resolution:

- A promoter applies for a permit. The permit authority makes it clear that it will only issue the permit with conditions attached or with different dates than in the application, and may in fact issue a permit in those terms. The promoter believes that one or more of these conditions are unreasonable or unrealistic. The two parties are unable to resolve their differences; or,
- A promoter who has been issued with a permit and has started work realises that it will no longer be able to comply with the original permit. It applies, therefore, for the permit or its conditions to be varied or extended. The two parties are unable to reach agreement on any variation or perhaps, on whether any variation should be allowed.

Permit authorities and permit applicants should try, where ever possible, to resolve their disagreements between themselves. However, it is recognised that occasionally this may not be possible.

14.3 Appeals Procedure

This recommended dispute resolution procedure for appeals is set out in 14.4 and 14.5.

14.4 Dispute Review

If agreement cannot be reached locally on any matter arising under any part of this Code, the dispute should be referred for review on the following basis:

14.4.1 Straightforward issues

Where the two parties consider that the issues involved in the dispute are relatively straightforward, the matter should be referred to impartial members of a regional HAUC (that is those not representing parties directly involved in the dispute) for review. That review should take place within five working days from the date of referral. It is recommended that both parties accept the result as binding.

14.4.2 Complex issues

If the parties to the dispute think the issues are particularly complex, they should ask HAUC (UK) to set up a review panel of four members - two utilities and two street authorities. One of the four persons will be appointed as Chair of the panel by the HAUC (UK) joint chairs.

Each party must make all relevant financial, technical and other information available to the review panel

The review would normally take place within ten working days from the date on which the issue is referred to HAUC (UK). It is recommended that both parties accept the advice given by the review panel as binding.

14.5 Adjudication

If agreement cannot be reached by the procedure in 14.4 above, for instance if one or more of the parties does not accept the ruling of the Regional HAUC or HAUC (UK) review as binding, the dispute should be referred to independent adjudication provided that the parties agree that the decision of the adjudicator is deemed to be final. The costs of adjudication will be borne equally unless the adjudicator considers that one party has presented a frivolous case, in which case costs may be awarded against them. Where the adjudication route is followed, the parties should apply to the joint chairs of HAUC (UK), who will select and appoint the independent adjudicator from suitable recognised professional bodies.

14.6 Arbitration

Disputes relating to matters covered by the following sections of NRSWA may be settled by arbitration, as provided for in section 99 of NRSWA:

- Section 61 (6) - consent to placing apparatus in protected streets;
- Section 62 (5) - directions relating to protected streets;
- Section 74 (2) - charges for occupation of the highway where works are unreasonably prolonged;
- Section 74A (12) - charges determined by reference to duration of works;
- Section 84 (3) - apparatus affected by major works;
- Section 96 (3) - recovery of costs or expenses.

15. PERMIT FEES

15.1 Introduction

The Traffic Management Act, section 37 (7), enables fees to be charged for:

- applications for permits
- issuing permits; and,
- applications for variations to permits or the conditions attached
- variations to permits or the conditions attached.

Under section 37 (8) regulations can define the amount (or maximum amount) of fees, when they are payable and when not, discounts and the use of the income.

Permit schemes are not intended to generate revenue for permit authorities although, subject to the constraints in 15.3, an authority may cover its costs.

15.2 Fees Payable

The permit regulations allow authorities to charge undertakers. Highway authorities are not charged because this would simply circulate money around a local authority. An authority could use a shadow charging arrangement to show the cost of issuing permits to its own works promoters both to help understand its own costs and to set those alongside the costs to other promoters.

15.3 Allowable Costs and Fees

The Secretary of State has set maximum permit fees for various types of activity and road category. A permit authority must set out and justify its proposed fees in its application to run a permit scheme - see Chapter 7. The scheme Order will set out the approved figures.

15.3.1 Costs and overheads

The income from fees shall not exceed the total allowable costs prescribed in the permit regulations. The allowable costs of the complete scheme and its overall income have to be balanced – not each subsection, such as each activity type. This balance can be achieved over several years – see 15.7.

Allowable costs are limited to:

- the proportion of direct costs and overheads attributable to operating the scheme for undertakers
- the element of those costs that are over and above the cost of the authority's co-ordination duty under NRSWA.

This includes the costs of dealing with:

- activities which required a permit but for which no permit was sought
- proposed activities which would be subject to a permit but which do not lead to an application, for example, activity planning involving the authority which is later abandoned.

Overheads can include:

- non-salary staff-related costs such as pensions and benefits
- appropriate allocation of accommodation costs
- appropriate allocation of central services costs
- appropriate share of IT costs (software and hardware)
- general administration and management
- monitoring the permit system and the production of KPIs
- invoicing.

15.4 Maximum Fees

Notwithstanding an authority's estimates of costs, the regulations and Statutory Guidance set maximum fees that permit authorities may not exceed. The fees are structured to reflect the greater work involved in handling larger activities and busier roads:

| Table 7. Proposed maximum fee levels per permit or Provisional Advance Authorisation | | |
|---|---|--|
| | Road category 0 - 2 or traffic-sensitive | Road category 3 & 4 non traffic-sensitive |
| Provisional Advance Authorisation | £105 | £75 |
| Major activity | £240 | £150 |
| Standard activity | £130 | £75 |
| Minor activity | £65 | £45 |
| Immediate activity | £60 | £40 |

15.5 Permit Variation Fees

The amount of work required for an authority to vary a permit will depend on the activity. However, the regulations and Statutory Guidance set a maximum flat fee for permit variations initiated by the promoter:

- £35 for category 3 and 4 non traffic-sensitive streets
- £45 for category 0, 1 and 2 and traffic-sensitive streets.

If a permit variation moves an activity into a higher fee category, the promoter will be

required to pay the difference in permit fee as well as the permit variation fee.

No fee is payable if a permit variation is initiated by the authority - see Chapter 12.

15.6 Waived and Reduced Fees

15.6.1 Where no fee is payable

A promoter cannot be charged a fee:

- if the promoter is a highway authority
- if a permit is deemed to be granted because the authority had failed to respond to an application in the time required
- if a permit variation is initiated by the permit authority.

Where the permit authority has to revoke a permit through no fault of the promoter it would not be reasonable to charge for a new one. Authorities should include such a provision in their schemes.

15.6.2 Reduced fees

The regulations define two circumstances where discounts must be given when permit applications are co-ordinated in order to minimise disruption and sets the minimum discount:

- Where several permit applications - for activities which are part of the same project but which may be carried out in more than one street (see 10.6), - are submitted at the same time. This is not intended to cover area-wide activities.
- Where several promoters working within the same site submit applications at the same time. The primary promoter will require a permit with full information about the activities, and the other promoters will require a permit so that the authority knows who is working there.

The minimum discount is 30 per cent for all qualifying permits. Authorities can give greater discounts if they wish to encourage particular behaviours.

15.6.4 Authorities' Discretion

Authorities have the power to waive or reduce permit fees at their discretion. An authority can set out circumstances in which it would always waive or reduce fees in its application to run a scheme. The provision can be included in the scheme Order as long as the circumstances are clear. The authority would be bound by this commitment but would retain the option to waive or reduce fees in other circumstances.

15.7 Fee Reviews

Authorities will need to review fees from time to time to satisfy themselves and the Secretary of State that overall fee income does not exceed allowable costs. Although authorities will make their best estimates of costs and income in setting fee levels there will be occasions when a surplus or deficit exists at the end of the year. In reviewing fee levels those surpluses or deficits should be carried over and counted in later years so that a balance of costs and income is achieved over a number of years. The

outcome of annual fee reviews should be published and open to public scrutiny.

A methodology will be developed so that in future fees can be indexed in between fuller reviews of permit fees.

15.8 Use of Income

Permit schemes should not generate surplus revenue. Income should therefore be used only to meet the costs of the scheme.

16. CHARGING SCHEMES

16.1 Introduction

It is intended to enable a scheme for overrun charging under section 74 of NRSWA to operate alongside a permit scheme. Like permit schemes, section 74 schemes are not compulsory, however, unlike permit schemes, an authority does not require Secretary of State approval. The details of section 74 schemes operating in conjunction with permits are set out below.

Section 74 applies to undertakers' street works but to demonstrate equal treatment between promoters, permit authorities should collect equivalent information on performance for highway activities, in particular the equivalent of durations, revised durations and start, closed and clear dates.

16.2 Section 74 - Charges for Unreasonably Prolonged Occupation of the Highway

Section 74 of NRSWA enables highway authorities to charge undertakers if their works in the highway take longer than previously agreed.

All the information in this chapter is based on regulations for the proposed changes to *The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England)* regulations that the Government may bring into force at a later date. We reserve the right to change the information contained in the document and we will re-issue at a later stage to update these changes.

The regulations apply to every publicly maintainable highway other than:

- a footpath or bridleway
- a highway with a pedestrian planning order is in force; and,
- a highway prohibited for use by vehicular traffic by a traffic order - unless that prohibition is only at particular times.

If the activities take longer than either the "Prescribed Period" and also take longer than the "Reasonable Period" described later in this chapter, they become unreasonably prolonged - and the authority may levy a charge for each day, or part of a day that the works over-run.

If the activities are prolonged due to reasonable circumstances, such as unforeseen weather or ground conditions, the parties should agree a revised duration. See 16.8.

Activities carried out by an activity promoter on behalf of a highway authority or by the highway authority themselves are not subject to section 74 charges.

16.3 Exempt Activities

Certain types of activities are exempt from section 74 charging:

- activities in non traffic-sensitive streets that require opening the highway, but not breaking it up
- replacing manhole or chamber covers - that do not involve breaking up the street

- replacing poles, lamps, columns or signs in the same location where that does not involve breaking up the street
- pole testing that does not involve breaking up the street
- bar holes
- works carried out on behalf of a highway authority.

If one of the exemptions applies, the promoter must record the appropriate charge exemption in the permit application and Works Clear/Closed notices - see the Technical Specification document for EToN.

16.4 Prescribed Period

The “Prescribed Period” is the period during which no overrun charges can be levied. It has been set by the Secretary of State in regulations, at two days, starting on the day works begin.

The prescribed period does not relate to the time required to carry out any particular type of activity. Therefore it should not be used to judge the duration of proposed activities.

16.5 Reasonable Period

Under a permit scheme the “Reasonable Period” is the period set by the permit authority as reasonable for the activity in question. In most cases this will be the duration proposed by the promoter in its permit application. Agreement of the “Reasonable Period” will in any case be part of the process of giving a permit and the normal rules for the giving of a permit will apply. For the initial permit, the duration in the permit would be the “reasonable period”.

If no agreement can be reached on the “reasonable period”, then the authority will issue a permit with its own decision on duration as a condition to the permit and the dispute resolution procedure in Chapter 14 should be followed before referring the matter to arbitration (section 74 disputes are subject to arbitration - see 14.6). Until a dispute is resolved, the activity may proceed, provided a permit has been issued and the promoter works within the terms of that permit, but the authority’s estimate of the duration stands as the Reasonable Period.

If the end date and duration of the activity have changed once the matter is resolved, the promoter should submit a permit variation application incorporating the agreed terms, from which the authority should issue a permit. By agreement, the authority may issue a permit in the agreed terms without a further application from the promoter.

16.6 Duration of Works

All permit applications and section 74 notices should estimate start and end dates so that the duration can be calculated. In the context of permits the estimated duration will be as set out in the permit and associated conditions.

For section 74 purposes the estimated duration of an activity is measured from the start date to the end date given in the Notice of Actual Start. However, the actual duration used to assess whether the activity has overrun - is measured from the Notice of Actual Start to the completion of all activities in that phase of the activity, including any necessary reinstatement.

Interim and permanent reinstatements are accepted as separate phases and will need separate permits. The period between these cannot be considered as an overrun provided the site has been properly cleared. All spoil, excess materials, stores and signing, lighting and guarding should be removed from site before the activity can be regarded as finished.

Further activities to complete the reinstatement, for example the replacement of road markings where delay is permitted by the specification, should be indicated by using the appropriate site status, such as 'interim reinstatement'. This includes circumstances where other materials are permanent.

16.7 Actual Start (Sections 74(5B) and 74(5C))

Although the permit start date is also the proposed start for the activity, the actual start date may differ. For Category 3 and 4 non traffic-sensitive streets a flexible starting window is explicitly provided in regulations for permissible activities. On category 0-2 and traffic-sensitive streets, although they do not have the same flexibility, there may be occasions when activities cannot start when proposed. Therefore notification of the actual start for the activity must be given to begin the reasonable period. Activity must not begin before the date given in the permit, unless an early start has been agreed; to do so would be committing an offence.

Once the activity has begun, a Notice of Actual Start of an activity *must* be given by 10.00am the next working day on category 0, 1, 2 and traffic-sensitive streets and by the end of the next working day in the case of category 3 and 4 non traffic-sensitive streets. In the case of immediate activity the permit application will be taken as the actual start date notice as it is made after the activity has commenced, and the status should always be "In Progress".

Notice of Actual Start must be given in accordance with the requirements described in the Technical Specification for EToN. The identity of the main contractor or, if appropriate the Direct Labour Organisation ("DLO") must be provided on the actual start date notice. This should always be the organisation with whom the undertaker has the contract, and not any subcontractor who may be actually carrying out the activity.

16.8 Revised Duration Estimate

Unforeseen circumstances can delay the completion of activities, so the promoter should seek a variation to the permit, using the procedure in Chapter 12, at any time before the estimated end date. Such estimates should provide full justification for the extension.

The new duration, if it is changed, will be incorporated in the new permit that follows a variation. There could be circumstances where duration and reasonable period are not the same following a permit variation.

16.9 Works Clear (Section 74(5C))

A works clear notice is used following interim reinstatement. The Notice of Works Clear must be given no later than the end of the working day following the one on which the activity was cleared. Where the activity is completed in different phases such as interim and permanent reinstatement, there will be a need to be separate permits for each phase. In no circumstances should permits be sought for more than one phase,

although separate permits for the different phases may be sought at the same time if the promoter is confident that they can meet the dates of the later permits which may be some months later.

All spoil, excess materials, stores and all signing, lighting and guarding must be removed from site before the activity can be regarded as completed for a works clear notice. A new permit will be required for any subsequent phases such as to complete the permanent reinstatement.

16.10 Works Closed (Section 74 (5C))

A works closed notice is used following permanent reinstatement. The Notice of Works Closed must be given by the end of the next working day following the day on which the activity was closed.

All spoil, excess materials, stores and all signing, lighting and guarding must be removed from site before the activity can be regarded as completed for a Works Closed Notice.

If temporary road markings have been used, then the activity is not complete until the permanent markings are applied and the activity duration should also cover this period.

16.11 Informal Warning

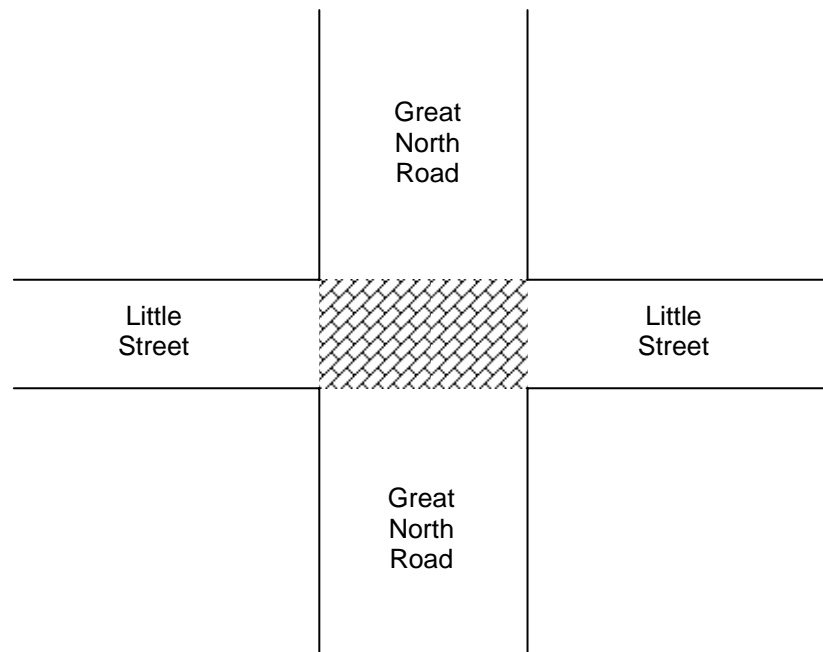
Authorities may want to consider sending undertakers an informal warning when their activity has begun to attract overrun charges. A non statutory notice has been defined in the Technical Specification for EToN for this purpose.

16.12 Charging Regime

Charges vary according to the type of activity, the road category and whether the street is traffic-sensitive.

Road category is an indication of the importance of the street - 0 being the highest, 4 the lowest. Information about determining the road category can be found in the *Specification for the Reinstatement of Openings in the Highway*.

The road category, as given in the Additional Street Data must be treated as definitive. If an authority has not entered road categories on the NSG, they will all be treated as category 4 for the purposes of overrun charges. Authorities should therefore ensure that the information available on the NSG is up-to-date.



When working in any area, which could be regarded as belonging to more than one street, the application should be made against the street with the highest road category. This is of particular significance when working at a junction. In the plan above, Little Street is a category 4 road and Great North Road is a category 2 road. If a promoter proposes an activity in the central area, marked in a herringbone pattern, the application should be made against Great North Road.

The charges will be applied according to the regulations , which sets out the maximum charge for each day that works overrun.

These are the maximum allowable charges. The regulations provide that street authorities can reduce the amount or waive payment of a charge.

Authorities should try to ensure that charges reflect the actual situation on the street. For example, activities in the footway, which require either equipment and materials on the carriageway, or a diversion over it, could be subject to section 74 charges if they overrun on category 3 and 4 non-traffic-sensitive streets.

Both authorities and promoters should take care to ensure that the facts used for proposing or disputing charges are accurate, along with the activity type and category of road. Where there is evidence that the dates given in s74 notices were incorrect the charges should be based on the evidence. If incorrect information has been given in a notice an authority may issue a FPN if it considers that an offence has been committed.

The *Code of Practice for Inspections* sets out the arrangements for inspections, which will include additional chargeable inspections that may be undertaken by the authority in relation to section 74. It also details how these should be carried out.

Examples of what does, and does not, constitute a failure in section 74 terms follow:

- works which are inspected and shown to have been completed shall be recorded as a passed inspection
- if the inspection reveals that works were not completed, despite the notice claiming that they were, then this shall be recorded as a failed inspection. The incorrect notice means that both section 74 overrun charging and legal proceedings could be activated
- if a works clear or a works closed notice is not received, this shall be recorded as a failed inspection. Failure to submit a correct notice on time is an offence
- if works overrun and no closure notice is sent, despite the proposed end date having passed, then this shall be recorded as a failed inspection. Section 74 overrun charges apply
- where works are cancelled using the permit cancellation procedure (see 12.4), the authority may inspect the site to assure itself that this cancellation has happened and that no work is proceeding, or has proceeded, at the site. If this is the case it shall be recorded as a passed inspection. If not it shall be recorded as a failed inspection. This would be an offence and may also be subject to overrun charges.

16.13 Remedial Works

Remedial works to rectify defective reinstatements shall be dealt with as a new activity, with their own duration estimate. Any overrun on remedial works will be charged at the rate appropriate to the activity category of the original activity.

16.14 Keeping Accounts

Section 74 overrun charges and permit fees should not be merged. This meets the industry regulators' requirements to see a clear separation between costs to undertakers that are avoidable and costs that are not.

17. PERMIT OFFENCES

17.1 Introduction

The Traffic Management Act 2004 provides for regulations under section 37 (4) (e) to create offences in relation to the operation of permit schemes.

The initial permit scheme will apply only to utility street works and highway authority works covered by the 'registerable activities' definition. Where possible the offences linked to the initial scheme have been developed to allow more general application as and when the scheme is extended to cover other Highways Act activities, as provided for in section 39 (1) of the TMA.

17.2 Offences

The permit regulations create two types of offences:

1. carrying out activities on the street or highway without a permit - except immediate activities, see below, – maximum fine level 5
2. carrying out activities on the street or highway in a way that contravenes the conditions attached to a permit, or the conditions that are applied to an immediate activity before a permit is issued for those activities – maximum fine level 4

Permit offences apply only to undertakers and not to highway authorities. However permit authorities are required to monitor the performance of highway authority promoters to ensure a consistent approach - see Chapter 20.

17.3 Working without a Permit

17.3.1 The permit register

Once a permit has been issued it will be placed on the permit register. Therefore the permit authority will be aware of the existence of all valid permits. The following specific circumstances should also be noted:

- a dispute over conditions could be dealt with using the procedure in Chapter 14. An authority might not issue a permit until this is resolved or, in some cases, it might issue a permit with its own conditions attached.
- if a permit authority fails to respond to an application within the prescribed timescales, a permit will be issued in the terms of the application.
- An activity promoter would be committing an offence if it continued to work after cancelling a permit.

17.3.2 Timeframe

A permit will cover a specified activity at a specified location at specified times. All elements of the activity must be completed within the dates on the permit – this includes not only the opening of the street, but all the ancillary work as well, such as stockpiling materials, setting up and disbanding traffic management and clearing the site.

A permit cannot be varied once it has expired. If a variation is necessary a promoter

should apply in good time.

17.3.3 Immediate activities - permits

A promoter can begin immediate activities without a permit but it must apply for one within two hours of starting work. The promoter can then continue working within the terms of any conditions that apply (see 11.5) and its application, for example regarding working hours. As outlined in 11.3, the permit authority should issue a permit within two days of the activity starting. Once issued, the promoter is bound by the terms of the permit and the attached conditions. This supersedes the terms in the application and any previous conditions set by the authority.

17.4 Breaching the Conditions of a Permit

17.4.1 Recording conditions

The conditions attached to a permit will be recorded in the permit register. If a permit is varied a new permit will be issued and any new conditions will be included and recorded. Therefore the status and substance of the conditions will be clear at any point in time.

Vague conditions will be difficult to enforce. Conditions should be precise so that both the permit authority and the promoter can easily check performance on site against them.

17.4.2 Immediate activities – conditions

Any conditions applied to immediate activities for the period before a permit is issued should normally be the standard conditions posted on the permit authority's website. These will be known to promoters. Although they may be more general than the conditions attached to specific permits, they should be unambiguous so that any breach can be assessed.

17.5 Sanctions

The regulations enable permit authorities to use one of three sanctions to achieve compliance with permit schemes – remedial action, fixed penalty notices or prosecution. Of course, where possible, authorities should aim to resolve problems informally.

17.5.1 Remedial action

The regulations empower the authority to issue a notice requiring remedial action within a set timeframe if the promoter is working without a permit or in breach of any conditions. This replaces the power under section 66 of NRSWA.

The remedial action could include removing the activity, remedying the breach of conditions or discontinuing any obstruction. The steps that the authority requires the promoter to take and the timeframe set out in the notice should be reasonable in the circumstances.

Where a promoter does not take the remedial action within the timeframe, the authority may take such steps as it considers appropriate to achieve the outcome in the notice, and, may recover any costs from an undertaker.

17.5.2 Fixed Penalty Notices

The second option for an authority dealing with an offence is to issue a Fixed Penalty Notice (FPN). The procedure for FPNs is covered in Chapter 18.

17.5.3 Prosecution

Finally, the authority may prosecute the offence through the courts following the usual processes. Normally the decision as to whether an offence will be dealt with by FPN or through the courts will be taken at the outset.

17.5.4 General Points

Decisions on the prosecution of alleged offences are for the permit authority. Prosecution should not necessarily be the preferred option - the process can be time-consuming and even FPNs do not offer an immediate solution. Neither will always resolve problems on the street and other options should be considered depending on the seriousness and persistence of offences.

17.6 Other NRSWA Offences

Any offences relating to other sections of NRSWA, which run in parallel to permit schemes will continue to apply. These include offences relating to reinstatements, overrunning and failure to send appropriate notices.

18. FIXED PENALTY NOTICES

18.1 Introduction

This chapter provides information about the Fixed Penalty Notice (FPN) scheme for permit schemes introduced by section 37 (6) of the TMA. It follows closely the FPN scheme under schedule 4B of NRSWA, details of which can be found in Chapter 11 of the Co-ordination Code.

The permit regulations provide for certain offences under Part 3 of the TMA to become fixed penalty offences. This means that they can be dealt with by FPNs, although prosecution through the Magistrates' Courts remains an option for permit authorities.

FPNs have been introduced to enable local authorities to better manage and control activities on the street. This will contribute to the overall aim of the TMA, which is to minimise disruption from street works. However, good planning and co-operation between authorities and promoters also plays a major role. Accurate and timely information about proposed activities from promoters, together with better data quality, will improve the authority's co-ordination function and reduce the need for FPNs.

FPNs apply only to statutory undertakers and not to highway authorities, but permit authorities are expected to monitor highway authority activities to ensure equal treatment across promoters.

18.2 Time Periods

All time periods, unless otherwise stated, are in working days.

18.2.1 Giving a FPN

A FPN may not be given more than 91 calendar days after the commission of the offence, beginning with the day on which the offence is committed. This is the maximum period allowed, but to improve co-ordination it is recommended that if a FPN is to be given, it should be done as soon as possible.

18.2.2 Payment

If the undertaker pays either the full penalty or the discounted amount within the required period, then no further proceedings can be taken against that undertaker for that offence.

18.2.3 Non payment

If the undertaker does not pay the penalty within the 36 days then the authority may bring proceedings in the Magistrates' Court for the original offence. A permit authority should have sufficient time to collate its case and take legal action before the expiry of the six months deadline for bringing a case and take action before the Magistrates' Court (section 127 of the Magistrates' Courts Act 1980) even if the FPN was not given for some time after the offence was committed.

18.3 Guidance for the Authority

18.3.1 Basic principles

Authorities are recommended to give FPNs where they have the most benefit. The authority will need to act reasonably. It should apply the same due process for giving a FPN as it would in taking the undertaker to the Magistrates' Court.

Good communication between the authority and the undertaker is essential for timely and accurate notices, and efficient co-ordination of works

An agent may deal with FPNs on behalf of the authority - provided that TMA powers for permit fixed penalty offences have been the subject to a Contracting Out Order, under the Deregulation and Contracting Out Act 1994. However, the authority remains responsible for ensuring that the powers are used correctly and responsibly.

18.3.2 The Fixed Penalty Notice

Only one FPN should be given per offence.

The fixed penalty notice must be given in the form prescribed in the regulations and included in Appendix H Table H2. The notice is divided into two parts:

- Part A includes information about the authority and the offence.
- Part B includes information about the payment of the penalty. It also includes a table listing the relevant offence codes for use in Part A.

The penalty is:

- £500 for working without a permit if paid within 36 days, discounted to £300 if payment is made within 29 days. The authority may extend the 36 day period at its discretion in any particular case.
- £120 for working in breach of a condition if paid within 36 days, discounted to £80 if payment is made within 29 days. This is the same as FPN penalties under the notices system.
- If the last day of the discounted period does not fall on a working day, the period for discounted payment is extended until the end of the next working day.

Guidance on completing the fixed penalty notice form follows:

The permit authority may choose to incorporate a 4 digit Data Capture Code

| | | |
|---|---|---|
| <p style="text-align: center;">*</p> <p>(* Insert Permit Authority name)</p> | <p>FIXED PENALTY NOTICE for PERMIT OFFENCES</p> <p>[NAME OF PERMIT SCHEME ORDER]</p> <p>THE TRAFFIC MANAGEMENT PERMIT SCHEME (ENGLAND)</p> <p>REGULATIONS 2007</p> | <p style="text-align: center;">FIXED PENALTY NOTICE</p> <p>Number:</p> |
| PART A | | |
| Contact Tel No. | | Permit Reference No* |
| TO: | | DATE OF THIS NOTICE: |
| ADDRESS: | | <p>Undertakers should provide an electronic address where possible as well as the postal address. If the undertaker fails to provide a postal address then the FPN should be served in accordance with the options set out in the regulations</p> |
| OFFENCE CODE: (See Part B) (NB: Only one offence code per fixed penalty notice) | | |
| LOCATION: | | |
| <p>← Location of activity</p> | | <p>← Insert relevant offence code from Part B</p> |
| DETAILS AND DATE OF OFFENCE: | | |
| <p>← Specify reasonable particulars of the circumstances alleged to constitute</p> | | |
| <p>1. I am giving you this notice, in accordance with section 37(6) of the Traffic Management Act 2004, and Schedule 4B to, the New Roads and Street Works Act 1991, to offer you the opportunity of discharging any liability to conviction for this fixed penalty offence by payment of a penalty.</p> <p>2. This means that no legal proceedings will be commenced for the offence if, subject to paragraph 3, the penalty of £ [xxx] is paid (See Part B for instructions on methods of payment) within the period of [36] days beginning with the date of this notice. (NB: The permit authority may extend this period in any particular case if they consider it appropriate to do so (See Regulation 25(3)).)</p> <p>3. Instead of paying the amount referred to in paragraph 2, liability to conviction for the offence may also be discharged if the discounted amount of £xxx] is paid within the period of [29] days beginning with the date of this notice. (NB: If the last day of this period does not fall on a working day, the period for payment of the discounted amount is extended until the end of the next working day (See Paragraph 5(3) of Schedule 4B)).)</p> <p>4. If the discounted amount is not paid within the period set out in paragraph 3, as extended where relevant, liability to conviction for the offence may only be discharged thereafter by payment of the penalty of £[xxx] within the period set out in paragraph 2, as extended where considered appropriate. If you then fail to pay the penalty within that period, legal proceedings for the offence may be commenced against you.</p> <p>5. Any representations that you wish to make in relation to this notice may be addressed to identifying the fixed penalty notice number stated above.</p> | | |
| NAME OF AUTHORISED OFFICER (in block capitals): | | |
| <p>.....</p> | | |
| DATE: | | |
| <p>.....</p> | | |
| <p>These should be different officers.</p> | | <p>Representations in writing should be made to this officer. The authority should provide full contact details.</p> |

PART B

| | | |
|---|---|--|
| <p style="text-align: center;">*</p> <p>(* Insert Permit Authority name)</p> | <p><u>INSTRUCTIONS ON METHODS OF PAYMENT</u></p> <div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: 80%;"> This must correspond to the number given in Part A </div> | <p style="text-align: center;">FIXED PENALTY NOTICE</p> <p style="text-align: center;">Number:</p> <p style="text-align: center;">.....</p> |
| <p>ELECTRONICALLY– by the Bankers Automated Clearing Services (BACS). Payment should be made to , Sort Code , Account Number . Payment must be supported by the timely submission of a list of the fixed penalty notice numbers covered by the payment and the amount being paid in relation to each number.</p> | | |
| <p>“ON LINE”- please visit our web site at Insert 'N/A' if this method of payment is not available</p> | | |
| <p>BY POST- by making your cheque payable to and sending it to . Payment must be accompanied by a list of the fixed penalty notice numbers covered by the payment and the amount being paid in relation to each number. A receipt will be sent on request.</p> | | |
| <p>IN PERSON – to at between 9.00am and 4.30pm on any day on which the office is open for business. Any cheque should be made payable to . Payment may be made by debit or credit card if the card is one that is accepted by the Street Authority in accordance with its standard procedures. Payment must be accompanied by a list of the fixed penalty notice numbers covered by the payment and the amount being paid in relation to each number. A receipt will be provided on request.</p> | | |
| <p>BY TELEPHONE – by contacting at on between 9.00am and 4.30pm on any day on which the office is open for business. Payment may only be made by using a debit or credit card that is accepted by the Street Authority in accordance with its standard procedures. You must state the fixed penalty notice number of each notice in respect of which payment is being made and the amount being paid in relation to each number. A receipt will be sent on request.</p> | | |

OFFENCE CODES AND DESCRIPTION

(By reference to the Traffic management Permit Scheme (England) Regulations 2007)

| CO DE | OFFENCE | BRIEF DESCRIPTION |
|----------|---------|-------------------|
| | | |
| | | |

18.3.3 Giving the Fixed Penalty Notice

Electronic FPNs are encouraged because they can be processed more easily, but other methods are possible.

Electronic FPNs

Undertakers need to give the authority an electronic address, such as email address, fax number or method linked to the EToN system if they want to receive FPNs this way. The authority must use this address.

The authority has to meet the three conditions set out in Regulations 41 (4) of *The Traffic Management Permit Scheme (England) Regulations 2007*:

"the electronic communication must be -

- (i) capable of being accessed by the person mentioned in that paragraph;
- (ii) legible in all material respects; and
- (iii) in a form sufficiently permanent to be used for subsequent reference;

and for this purpose "legible in all material respects" means that the information contained in the fixed penalty notice is available to that person to no lesser extent than it would be if given by means of a fixed penalty notice in printed form."

If the fixed penalty notice is given by electronic means, then the notice is deemed to be given at the time when the transmitting apparatus records satisfactory completion of the transmission, unless the contrary is proved.

Non-electronic FPNs

In all other circumstances, including system failures or if the authority has tried to use electronic means but cannot do so, the authority may give the FPN by alternative methods such as:

- delivering it to the person to whom it is addressed
- leaving it at his proper address
- sending it by first class post; or,
- any other agreed means.

In these circumstances the 'proper address' is the postal address given by the undertaker to the authority for those purposes; the registered or principal offices of a corporation; or the last known address of such persons.

The permit regulations include provisions (equivalent to Section 98 (2) of NRSWA) whereby a notice given after 16:30 on a working day is deemed to have been given on the next working day. Please note that the time of 16:30 is significant only for reckoning notice periods and does not mark the 'end' of the day for any other purposes.

18.3.4 Withdrawing a Fixed Penalty Notice

If an authority considers that a FPN ought not to have been given it may withdraw the FPN using a 'Notice Withdrawing Fixed Penalty Notice'. If this is given, the authority shall repay any amount that has been paid by way of penalties and proceedings shall

not be commenced or continued for that offence.

Guidance on completing the fixed penalty notice withdrawal:

| | | |
|---|--|---|
| * | NOTICE WITHDRAWING FIXED PENALTY NOTICE [NAME OF PERMIT SCHEME ORDER] REGULATION 27 OF THE TRAFFIC MANAGEMENT PERMIT SCHEME (ENGLAND) REGULATIONS 2007 | FIXED PENALTY NOTICE Number: |
| TAKE NOTICE that the fixed penalty notice numbered as above is hereby WITHDRAWN . | | |
| NAME OF AUTHORISED OFFICER (<i>in block capitals</i>) : | | |
| DATE : | | |

18.4 Guidance for Undertakers

18.4.1 Basic principles

A FPN offers an undertaker the opportunity of discharging any liability to conviction for a fixed penalty offence by payment of a fixed penalty.

A FPN will be given to the undertaker promoting the works and not to any contractor carrying them out. Some undertakers may arrange for noticing and other procedures under Part 3 of the TMA to be carried out by an agent. If the undertaker wants the agent to deal with FPNs then it will need to inform the authority accordingly. Even so, the undertaker remains responsible for managing its statutory duties and obligations under NRSWA and the TMA.

18.4.2 Payment of the fixed penalty notice

Part B of the FPN sets out the methods by which the penalty may be paid. There are a number of options:

- electronic payment using the Bankers Automated Clearing Services ("BACS")
- via the street authority website
- by post
- in person; or,
- by telephone.

The authority should indicate all available methods of payment in Part B of the FPN form.

The undertaker must set up payment facilities, provide contact details and agree methods of payment with the Finance Department in each authority.

It is important that the authority is informed which fixed penalties are being paid and at which level:

- For BACS, the undertaker must support payment with details of the FPN numbers covered by the payment and the amount being paid in relation to each (discounted or full). It is in everyone's best interests that the payment is processed quickly.
- When paying by post or in person, the payment must be accompanied by a list of the FPN numbers covered by the payment and the amount being paid in relation to each (discounted or full).
- When paying by telephone or via an e-payment system, the undertaker must quote full details of the FPN numbers covered by the payment and the amount being paid in relation to each (discounted or full).

The use of electronic payment methods is strongly encouraged. However, if paying in person or by telephone, it is the undertaker's responsibility to find out the authority's office opening hours and any other arrangements that may apply. If the undertaker wishes to pay using a credit/debit card, it needs to contact the authority in good time to confirm that its card is accepted

18.5 Representations

To enable an early resolution, it is strongly recommended that any representation against the issuing of a FPN is made as soon as is reasonably practicable.

Before making an official representation, the undertaker is advised to informally contact the authorised officer who gave the FPN. If this fails to resolve the issue, the undertaker should make a written representation to the officer specified on the FPN as responsible for considering representations. This formal representation should be made in writing, either electronically or on paper, to provide an audit trail.

Permit authorities need to ensure that a fair and open system is in place for considering representations. Representations should always be referred back to the authority in whose name the FPN is issued, even if the function of issuing FPNs has been contracted out. The authority should ensure that it has a nominated official to consider all such representations.

The authority may extend the full payment period while representations are being considered. It is NOT able to extend the discounted payment period.

18.6 Application of Money by the Permit Authority

The permit authority may deduct from the fixed penalties received under section 37 (6) of the TMA, the reasonable costs of operating the FPN scheme under which they are paid. The authority shall apply the net proceeds to promoting and encouraging safe, integrated, efficient and economic transport facilities and services, to, from and within its area.

Authorities need to be able to demonstrate that the costs of running the FPN scheme are reasonable and that the net proceeds after deducting these costs are being correctly applied. Those enquiring should note that accounts are generated annually. Although it is not a requirement that separate accounts should be kept for the FPN scheme, it should be possible to follow the audit trail to check income and expenditure for this scheme.

The introduction of a FPN scheme is **NOT** intended to be an additional source of income for authorities, although some income may be generated incidentally. The

objective of a FPN scheme is set out in 18.1 and the scheme should be operated with that in mind. The authority should therefore not expect any net proceeds emerging from this scheme.

19. RELATED MATTERS

19.1 Road Closures and Traffic Restrictions

Provisions governing temporary road closures and traffic restrictions for works or other activities in the street are found in Sections 14 – 16 of the Road Traffic Regulation Act 1984, as amended by the Road Traffic (Temporary Restrictions) Act 1991, and Regulations made under the 1984 Act.

There are two procedures

- (a) Where urgent action is needed the traffic authority may issue a **‘temporary notice’** imposing a short-term closure or restriction. Prior notice is not necessary.

The notice is limited to 21 days if there is a danger to the public or risk of serious damage to the road, independent of street works - a leaking gas main, for example. It can be extended by one further notice.

The notice is limited to five days if there is no risk of danger or damage.

- (b) In less urgent cases the traffic authority may make a **‘temporary order’**, which may remain in force for up to 18 months. This is limited to six months for footpaths, bridleways, cycle tracks and byways open to all traffic.

A temporary notice and a temporary order may provide that restrictions have effect only when traffic signs are lawfully in place. This will help limit traffic disruption where activities progress along a length of road.

In extraordinary circumstances, the Road Traffic Act 1991 section 49(4A), allows the police to suspend designated street parking places temporarily to prevent or mitigate traffic disruption, or danger to traffic. This could prove useful to promoters carrying out emergency works.

19.1.1 Procedure

Temporary notices

This procedure will only apply to immediate activities.

The promoter will inform the traffic authority as soon as practicable if a closure or traffic restriction is needed. The authority will consult with the police and all relevant parties, and confirm, as soon as possible, whether or not a notice will be made.

The traffic authority must state in the notice:

- the reason for issue
- its effect
- alternative routes (where applicable); and,
- the date and duration of the notice.

The traffic authority must also notify the emergency services and any other traffic authority with roads that may be affected. This should be done on, or before, the day the notice is issued.

Temporary orders

The traffic authority must publish notice of intention to make a temporary order at least seven days in advance. If the order is expected to last for more than 18 months because activities are to be executed on or near the road, the proposal must be advertised at least 21 days in advance and published in two local newspapers. Such orders must be revoked as soon as the activity is completed.

The traffic authority must also notify the emergency services and any other traffic authority with roads that may be affected. This should be done on, or before, the day the order is issued. These bodies should be consulted, as well as notified, if the closures are expected to last for more than 18 months.

A temporary traffic order is generally needed for planned activities in the street (except where the order follows a closure notice). If a closure order is needed, the promoter should notify the traffic authority at least three months in advance. This will allow the authority time to consult, and to obtain approvals and advertise the order. Activities that required a temporary traffic order are automatically classed as major and require at least three months for applying for a permit, and the procedures set out in Chapter 10 will apply.

The promoter must submit all the information needed to justify a road closure with the application for an order.

Continuation of closures and restrictions

A five-day temporary traffic closure or restriction notice cannot be extended. A 21-day temporary notice can be extended by one further notice giving up to 21 days more. Both five-day and 21-day notices may be followed immediately by a temporary order. This may be made without the seven days prior notice normally needed for such orders.

If the original estimate of the duration of the activity changes, a request for a permit variation will be necessary. See Chapter 12.

There will be cases where works will unavoidably overrun the temporary notice period.

Where this is apparent from the beginning, promoters must inform the traffic authority. The authority will take the necessary follow-up action, without delay, to enable the activity to continue uninterrupted.

If the overrun becomes apparent only after the activity has started, the promoter should immediately inform the authority that either a further notice or an order will be required. This may be needed before the request for a permit variation is made.

It might not be possible to make a follow-up order before a five-day notice expires. The activity may have to be suspended, and the site temporarily restored to traffic until the correct procedures have been followed. The traffic authority will try to minimise both, the number of cases where this happens, and, where it is unavoidable, the period of suspension involved. This problem is unlikely to arise in the case of a 21-day temporary order.

Subject to the time limit for temporary orders, see above, a closure or restriction imposed by a temporary order may be continued by a further order. If this is required,

the promoter should notify the traffic authority immediately, giving wherever possible, at least one month's notice.

19.1.2 Policy guidance

When a notice or order has been made, the promoter must comply with the requirements of the traffic authority and the police for the closure of the road.

Permit authorities may require unreasonably lengthy obstructions to be mitigated or discontinued using the powers in the permit regulations that replace s66 of NRSWA. There is a presumption that closures or restrictions will remain in force only for as long as is necessary to fulfil their original purpose.

Highway authorities are under a statutory obligation to maintain a public right of passage and they also are expected to carry out activities with due despatch.

19.1.3 Charges

Section 76 of NRSWA allows for traffic authorities to recover the costs of issuing temporary notices or making temporary traffic regulation orders (TROs). Upon receipt of an application for a TRO, highway authorities should provide utilities with the estimated cost. Invoices should be itemised as follows:

- (a) cost of order
- (b) advertising in local papers
- (c) administration.

19.2 Maintenance of Undertakers' Apparatus

Undertakers have a duty, under section 81 of NRSWA, to maintain apparatus in the street to the reasonable satisfaction of the street authority, having regard for the safety and convenience of traffic, the structure of the street, and, integrity of apparatus in it. Bridge, sewer and transport authorities also have an interest, so far as any land, structure or apparatus they own is concerned.

Most undertakers have statutory obligations to maintain their networks - quite apart from which, they must maintain systems in efficient working order to properly discharge their safety and service obligations to their customers.

Thus authorities and undertakers have a shared interest in the proper maintenance of apparatus in the street.

As with reinstatements, it is important that the street authority reports any apparatus in an unsatisfactory condition quickly and accurately and includes the level of severity of the problem. The owner must respond and carry out any necessary remedial works within the reasonable timescales agreed with the street authority.

19.2.1 Practical considerations

Although NRSWA gives street authorities certain default powers to inspect and carry out emergency works, neither street authorities nor undertakers expect the need to arise. However, should it happen, then (without impeding any immediate emergency action) the matter will be referred to the agreed dispute resolution procedure.

The street authority must immediately notify the undertaker if surface apparatus is

found to be defective or the cause of significant surface irregularity, or where an unexplained subsidence or other disturbance of the road surface occurs. This should be done in accordance with the protocols set out in the Technical Specification for EToN, or a locally agreed protocol. The authority may arrange a site meeting by agreement with the undertaker. If an undertaker accepts responsibility for previously un-attributable street works, it must issue relevant notices using its own works reference, rather than that generated by the street authority.

If the problem is agreed to be the undertaker's responsibility, it must take immediate action to investigate and initiate any necessary remedial works, in accordance with the following principles:

- (a) Dangerous defects – requires an immediate response
- (b) Non-Dangerous – requires a response within the timescales agreed with the street authority

Dangerous

Apparatus that requires an immediate response or remedial works or to avoid injury or damage to persons or property shall be considered dangerously defective.

Examples include:

- missing covers and/ or frames
- sunken or raised covers and/ or frames (generally greater than 25mm depth/trip).

Notwithstanding the above, the street authority may execute any emergency works needed in consequence of the undertaker failing to maintain his apparatus.

Non-Dangerous – requires a response within the timescales agreed with the street authority:

Non-Dangerous defective apparatus is apparatus which requires attention to comply with specifications or remove nuisance; or has the potential to escalate to "Dangerous" in the near future.

Examples may include:

- cracked covers and/or frames
- sunken or raised covers and/ or frames (generally less than 25mm depth/trip)
- rocking covers and/or frames
- worn/polished covers in carriageways and cycleways, on bends, or on the approaches to "Stop" lines; "Give-Way" lines; traffic lights; pedestrian crossing lights; zebra crossings; and, railway/tramway level crossings. These covers could also be Dangerous depending on the circumstances at the site.

Note: The decision on whether an occurrence is Dangerous or Non-dangerous will, by necessity, have to be made on site. It should not be challenged unreasonably. Hence, it is important that the classifications are strictly applied.

An undertaker may reduce the time for response, to meet operational needs for example, but shall not exceed the recommended timescales.

It is important that only the responsible undertaker, or a specialist contractor working on

its behalf, investigates suspected damaged or defective apparatus, excluding manhole covers and frames. Street authorities will carry out investigations or remedial works (using appropriately trained and experienced persons) only in an emergency, or where the undertaker is unable or unwilling to use their own operatives or specialist contractor.

Notification will be made using the protocols set out in the Technical Specification for EToN.

If the street authority has opened the street or exposed the undertaker's apparatus in an emergency, or in the circumstances described above, the undertaker will assist the authority by:

- jointly inspecting the problem to determine necessary remedial works, or
- confirming approval for the authority to proceed.

The authority and the undertaker should agree the time within which it is reasonable for the undertaker to assist before the authority commences remedial works. The reasonably incurred costs may be charged to the undertaker.

19.3 Working Near Rail Tracks and Tramways

Detailed information and requirements for working near rail tracks is given in Appendix C.

Activity promoters planning works near to, adjacent to or across the lines of street running tramways should contact the transport authority responsible for that tramway as early in their planning cycle as possible. The promoter's requirements can be incorporated in the contract documents.

19.4 Vehicle Parking at Street and Road Works

This is not safety advice. *The Code of Practice on Safety at Street Works and Road Works* should always be consulted.

19.4.1 Vehicle within activity site

A works vehicle may be parked in an activity site provided that it is necessary for the carrying out of that activity. Basic site layouts are shown in the *Code of Practice on Safety at Street Works and Road Works*. A vehicle entirely within the coned-off area of the site may require a larger coned-off area than would otherwise be the case.

19.4.2 Vehicle outside activity site

A vehicle may be parked outside an activity site provided the parking rules that apply to any other vehicle in that street are obeyed. Outside of the activity site, the vehicle has no special status and no exemption from parking enforcement.

19.4.3 Implications

When assessing the impact of activities (see 19.7 and Appendix G) the parking of any vehicles associated with the activity must be taken into account.

This is a particular problem for activities which, but for the presence of a works vehicle, would take place entirely within the footway. If a vehicle is parked adjacent to the

activity, in a place which vehicles could not normally use, then it must be part of the activity site. It must be signed and guarded appropriately. The activity is then not wholly confined to the footway but encroaches onto the carriageway. Applications for permits must reflect this.

19.4.4 Parking restrictions

The Traffic Regulation Order imposing parking restrictions on a particular street should already contain an exemption allowing for activities to take place in a parking bay. Promoters should check whether any further dispensation is required well before the works are due to start.

19.5 Storage of Materials

Activity promoters and permit authorities should take care to place materials so that they do not cause an obstruction to road users. This is especially important if materials are stored away from the activity site but still within the highway boundaries. The storage must have its own permit with conditions if it is separate from the activity site.

19.6 Apparatus belonging to others

There may be other apparatus where activities are planned and under section 69, those carrying out activities must ensure that the owners of that apparatus are able to monitor the activity and that requirements to take reasonable steps to protect the apparatus are followed. Failure to do so is a criminal offence.

19.7 Assessing the Impact of Activities

This section explains the concept of 'Disruptive Effect Score' and Appendix G describes the approach to assessing the disruptive impact of activities on general traffic, buses and pedestrians.

All activities in the highway have a disruptive effect on traffic. The disruption effect is based on a measure of congestion resulting from a restriction on the highway. It is derived from a number of simple factors that can be easily established for any given activity.

19.7.1 Disruption Effect Score

The Disruption Effect Score is a simple numeric indicator of the disruption likely to arise from a given activity.

The nature of traffic flow and the relationship between flow, capacity, and delay are highly complex and subject to a variety of factors. However three specific factors can be used to ascertain congestion: the total width of a road; the extent to which the activities reduce the available width; and the traffic flow.

19.7.2 Impact assessments

Assessment of the impact of activities on general traffic, buses and pedestrians may be included, together with the disruption effect score, in the information included in a permit application. The assessment is a broad indicator of the likely disruptive effect of the proposed activity. Details on the derivation and use of the impact assessments are included at Appendix G (G4).

19.7.3 Use of impact assessments

The impact assessment can be used within the co-ordination process to prioritise activities according to their potential for causing disruption. The assessment can also be used to provide public information on the disruptive effects of activities.

19.8 Environmental Issues

Activity promoters are strongly advised to liaise with the authority's arboricultural consultants and other environmental officials when drawing up their proposals. This should ensure that wherever possible, and at reasonable cost, their requirements can be met.

A promoter considering burying plant and apparatus that is currently above ground should contact any other utility with similar apparatus to see whether it wishes to share the underground facility.

20. KPIS AND PERMIT SCHEMES

20.1 Background

One aim of permit schemes is to ensure that authorities apply a consistent approach to all activities and activity promoters.

In most cases the permit authority will be the highway authority but the highway authority will also be a promoter of its own maintenance and other highway and traffic activities. Authorities will need to separate these functions within their organisations. Notwithstanding that separation, it would be inappropriate for one part of an authority to charge fees or issue penalties against another part of the same organisation.

20.2 Parity of Treatment

Authorities must demonstrate parity of treatment for all activity promoters, particularly between statutory undertakers and the highway authorities' own promoters. The issue of equal treatment is emphasised in the *Guidance on the Network Management Duty* introduced under the TMA.

Equality will be measured through Key Performance Indicators (KPIs). A permit authority must produce an annual set of KPIs that identify the treatment of individual promoters.

The KPIs described in this chapter are for the specific purpose of demonstrating parity of treatment within a permit scheme, although they may also indicate other aspects of performance of individual promoters, the authority or the permit scheme itself.

It is likely that the KPIs will be developed as experience of permit schemes increases and datasets are built up. Other KPIs may be specified in due course.

20.3 KPIs for Permit Schemes

Every authority that wants to run a permit scheme must explain how it intends to demonstrate parity of treatment for promoters in its application.

The table below contains seven KPIs that could be used for this purpose. **The provision of KPIs 1 and 2 is a mandatory requirement of all permit schemes.** Authorities should select at least two others which they consider will demonstrate parity across their scheme. Authorities can also include their own KPIs.

It is recommended that the KPIs should be discussed at Quarterly Co-ordination Meetings and other regular meetings with promoters.

The data will provide useful information for Government and other regulatory bodies. The Department for Transport may wish to inspect these figures so the information should be readily available.

| Table 9. KPIs for permit schemes | |
|--|---|
| 1. | The number of permit and permit variation applications received, the number granted and the number refused |
| <p>This will be measured by the promoter and shown as:</p> <ul style="list-style-type: none"> the total number of permit and permit variation applications received, excluding any applications that are subsequently withdrawn the number granted as a percentage of the total applications made the number refused as a percentage of the total applications made. <p>This will be a core indicator of the operation of the permit system.</p> <p>It is a requirement that all authorities operating a permit scheme produce this performance indicator.</p> | |
| 2. | The number of conditions applied by condition type |
| <p>This will be measured by promoter and shown as:</p> <ul style="list-style-type: none"> the number of permits issued the number of conditions applied, broken down into condition types. The number of each type being shown as a percentage of the total permits issued. <p>This KPI is dependent upon the use of standard conditions. Local or specific conditions should be grouped into a single category that may be analysed more fully if required.</p> <p>The number and types of condition applied are likely to be determined by the specific location, scale and category of the works. There will be a need to separate the data to get down to reasonably equivalent situations. For example, if for minor works on category 2 streets, one promoter had an average of four conditions and another had an average of seven conditions then that would suggest an imbalance. Similarly, if one promoter had conditions for restricted hours of working on traffic-sensitive streets in 90% of cases and another had such conditions in only 60% of cases, then that would raise a question.</p> <p>It is a requirement that all authorities operating a permit scheme produce this performance indicator.</p> | |
| 3. | The number of approved extensions |
| <p>This will be measured by promoter and shown as:</p> <ul style="list-style-type: none"> the total number of permits issued the number of requests for extensions shown as a percentage of permits issued the number of agreed extensions as a percentage of extensions applied for. | |
| 4. | The number of occurrences of reducing the application period |

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| <p>This will be measured by promoter and shown as:</p> <ul style="list-style-type: none"> • the total number of permit and permit variation applications made • the number of requests to reduce the notification period as a percentage of total applications made • the number of agreements to reduce the notification period as a percentage of requests made. |
| <p>5. The number of agreements to work in section 58 and section 58A restrictions</p> |
| <p>This will be measured by promoter and shown as:</p> <ul style="list-style-type: none"> • the number of applications made to carry out works where a section 58 or 58A restriction is in place, other than the allowed exceptions • the number of agreements given for these works to take place as a percentage of the total number of requests. <p>NB: This KPI is not supported by EToN</p> |
| <p>6. The proportion of times that a permit authority intervenes on applications that would normally be expected to be deemed</p> |
| <p>This should be broken down by promoter and indicated as the number of interventions made as a percentage of the number of 'deemed applications' processed, including 'deemed planned applications' made.</p> <p>This KPI would be limited to schemes that do not require a proactive check of every permit application received.</p> <p>Any variation in the dates requested in the initial 'deemed application' and those granted in the permit will indicate where an intervention had taken place. Intervention may not always be made in respect of timing, although it is most likely to be: this KPI will act as a first order measure. It will indicate where active intervention has taken place and not where scrutiny has occurred without any active intervention.</p> |
| <p>7. Number of inspections carried out to monitor conditions</p> |
| <p>This will be broken down by promoter and shown as:</p> <ul style="list-style-type: none"> • the number of sample permit condition checks carried out as a percentage of the number of permits issued • the percentage of sample inspections by promoter should also be shown. |

21. PERMIT SCHEMES – TRANSITIONAL ARRANGEMENTS

The permit regime has been designed to follow closely the processes and timescales of the noticing regime. This should help utilities and others working across authorities where both systems could be operating - in adjacent authorities, or even on adjacent roads in one authority. This similarity will also make the switch from notices to permits reasonably straightforward. Nevertheless, there are rules to ensure a smooth change, particularly for activities that are underway.

21.1 Consultation

The consultation prior to an authority applying to run a permit scheme and the application process itself will provide early indication to all concerned of an impending changeover. The changeover date will be in the Order authorising the scheme and must be a minimum of four weeks after the order is made. The authority should ensure that discussion takes place with all promoters during the transition period to ensure that issues are picked up early and problems dealt with quickly.

21.2 Transition Rules

The basic rules of transition will apply on all roads where the permit scheme operates.

- (a) The permit regime will apply to **all activities where the administrative processes, such as application for a permit or Provisional Advance Authorisation, start after the commencement date.**
- (b) **Activities which are planned to start on site** more than one month after the changeover date (for standard, minor and immediate activities) or three months (for major activities) shall operate under the permit scheme. This means that even if the relevant section 54, section 55 or section 57 NRSWA notice has been sent before the changeover, the promoter will have to apply for a permit.
- (c) Any **other activities which started under the notices regime** will continue under that regime until completion.

Given the advanced notice of the changeover there should be few activities where these rules will create difficulties. Activities co-ordinated in the run-up to the imposition of a restriction might be such a situation. In those few cases, discussions should take place between the authority and the promoters concerned to work out a practical way of dealing with the activities.

Transitional provisions will be set out in the Order giving effect to the permit scheme.

Appendix A GLOSSARY

Section and paragraph references (e.g.2.2. and 2.2.1) are references to the Code of Practice

| Term | Explanation |
|--------------------------------|---|
| Above ground works | Any works (not being overhead works) which do not involve the breaking up or opening of the street or tunnelling or boring under it |
| Additional street data ("ASD") | As it says in section 4.3. Additional Street Data ("ASD") refers to other information about streets held on the NSG concessionaire's website alongside the NSG |
| adjudication | Section 14.5 |
| Apparatus | As defined in section 105(1) of NRSWA "apparatus includes any structure for the lodging therein of apparatus or for gaining access to apparatus" |
| appeal | Section 14.3 |
| Arbitration | As defined in section 99 of NRSWA, "any matter which under this Part is to be settled by arbitration shall be referred to a single arbitrator appointed by agreement between the parties concerned or, in default of agreement, by the President of the Institution of Civil Engineers" |
| Bank holiday | As defined in section 98(3) of NRSWA, "bank holiday means a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the locality in which the street in question is situated" |
| Bar hole | As stated in 9.1, a bar hole is used to detect and monitor gas leaks. |
| Breaking up (the street) | Any disturbance to the surface of the street (other than opening the street) |
| Bridge | As it says in section 88(1)(a) of NRSWA, "references to a bridge include so much of any street as gives access to the bridge and any embankment, retaining wall or other work or substance supporting or protecting that part of the street" |
| Bridge authority | As defined in section 88(1)(b) of NRSWA, "bridge authority means the authority, body or person in whom a bridge is vested" |
| Bridleway | As defined in section 329 of the HA 1980, "bridleway means a highway over which the public have the following, but no other, rights of way, that is to say, a right of way on foot and a right of way on horseback or leading a horse, with or without a right to drive animals of any description along the highway" |
| BS7666 | British Standard number 7666 relating to gazetteers |
| Carriageway | As defined in section 329 of HA 1980, "carriageway means a way constituting or comprised in a highway, being a way (other than a cycle |

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| | track) over which the public have a right of way for the passage of vehicles" |
| Central register | As stated in 3.3, a central register is a register covering two or more street authority areas that is maintained by one single authority, the 'register authority'. For example, a central register could include all authorities in a metropolitan area |
| Contravention | As defined in section 329 of HA 1980, "contravention in relation to a condition, restriction or requirement, includes failure to comply with that condition, restriction or requirement, and "contravene" is to be construed accordingly" |
| Council | As defined in section 329 of HA 1980, "council means a county council, the Great London Council or a local authority" |
| Critical gyratory or roundabout system | A gyratory or roundabout system where, in the absence of street works or works for road purposes, no less than 5 per cent of peak hour vehicles on average are delayed by more than 20 seconds |
| Critical signalised junction | A traffic signal junction at which, in the absence of street works or works for road purposes and at times when the exit is not blocked, no less than 5 per cent of peak hour vehicles on average fail to clear the junction on the first green signal |
| Culvert | A structure in the form of a large pipe or pipes, box or enclosed channel generally used for conveying water under a road |
| Cycle track | As defined in section 329 of the HA 1980, "cycle track means a way constituting or comprised in a highway, being a way over which the public have the following, but not other, rights of way, that is to say, a right of way on pedal cycles with or without a right of way on foot" |
| day | a working day, unless explicitly stated otherwise |
| DfT | Department for Transport |
| Disability | As defined in section 105(5) of NRSWA, "Section 28 of the Chronically Sick and Disabled Persons Act 1970 (power to define "disability" and other expressions) applies in relation to the provisions of this Part as to the provisions of that Act" |
| Distribution Network Operator (DNO) | Operator of an electricity distribution network |
| e-government | The Government objective to deliver efficiency savings while improving the delivery of public services by joining up electronic government services around the needs of customers |
| Emergency works | As defined in section 52 of NRSWA, "emergency works means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property" |

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| Excavation | "Breaking up" (as defined above) |
| Extensible Markup Language (XML) | A self-describing data format providing (amongst other things) a method of transferring data between systems. Note that the UK Government eGIF standard mandates XML for this purpose. |
| File transfer protocol (FTP) | A method of transferring data between computers defined by RFC959 (RFCs - Request for Comments) are the standard documents that define the operation of the internet) |
| Fixed Penalty Notice | As defined in schedule 4B to NRSWA, "fixed penalty notice means a notice offering a person the opportunity of discharging any liability to conviction for a fixed penalty offence by payment of a penalty" |
| Footpath | As defined in section 329 of the HA 1980, "footpath means a highway over which the public have a right of way on foot only, not being a footway" |
| Footway | As defined in section 329 of the HA 1980, "footway means a way comprised in a highway which also comprises a carriageway, being a way over which the public have a right of way on foot only" |
| Frontager | A person or body occupying premises abutting the street |
| Geographical information system (GIS) | A computer system for capturing, storing, checking, integrating, manipulating, analysing and displaying data related to positions on the Earth's surface |
| HA 1980 | The Highways Act 1980 |
| HAUC(UK) | The Highway Authorities and Utilities Committee for the UK |
| Heavy commercial vehicle | As defined in section 138 of the Road Traffic Regulation Act 1984, "heavy commercial vehicle means any goods vehicle which has an operating weight exceeding 7.5 tonnes". |
| Highway | As defined in section 328 of the HA 1980, "highway means the whole or part of a highway other than a ferry or waterway" |
| Highway authority | As defined in sections 1 and 329 of the HA 1980 |
| Highway works | "works for road purposes" or "major highway works" |
| Immediate activities | As stated in section 9.2.4, immediate activities are either emergency works as defined in section 52 of NRSWA or urgent works as defined in <i>The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007</i> |
| In | As defined in section 105(1) of NRSWA, "in, in a context referring to works, apparatus or other property in a street or other place includes a reference to works, apparatus or other property under, over, along or upon it" |
| Land | As defined in section 329 of HA 1980, "land includes land covered by water and any interest or right in, over or under land" |
| Local authority | As defined in section 270(1) of the Local Government Act 1972(a) and |

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| | includes the Common Council of the City of London. |
| Local highway authority | As defined in section 329 of HA 1980, "local highway authority means a highway authority other than the Minister" |
| Local planning authority | Local planning authority has the same meaning as in the Town and Country Planning Act 1990" |
| Local register | As stated in 3.3, a local register is a register that is maintained by a single street authority for their own geographic area and will include information on all streets other than those streets that are the responsibility of another street authority |
| Local street gazetteer | A subset of the NSG containing details of all streets in a local highway authority area, being a self-contained entity created and maintained by the local highway authority covering all streets in their geographic area regardless of maintenance responsibility |
| Maintainable highway | As defined in section 329 of HA 1980, a "highway maintainable at the public expense means a highway which by virtue of section 36 above or of any other enactment (whether contained in this Act or not) is a highway which for the purposes of this Act is a highway maintainable at the public expense" |
| Maintenance | As defined in section 329 of HA 1980, "maintenance includes repair, and "maintain" and "maintainable" are to be construed accordingly" |
| Major activities | As stated in section 9.2.1, major activities are activities which have been identified in a promoter's annual operating programme, or if not identified in that programme, are normally planned or known about at least six months in advance of the date proposed for the activity; <i>or</i> activities, other than immediate activities, where (i) the authority has indicated to the promoter, or (ii) the promoter considers, that an order under section 14 of the Road Traffic Regulation Act 1984 (temporary prohibition or restriction on roads) is required; <i>or</i> activities, other than immediate activities, which have a planned duration of 11 days or more". |
| Major bridge works | As defined in section 88(2) of NRSWA, "major bridge works means works for the replacement, reconstruction or substantial alteration of a bridge" |
| Major highway works | As defined in section 86(3) of NRSWA, "major highway works means works of any of the following descriptions executed by the highway authority in relation to a highway which consists of or includes a carriageway - (a) a reconstruction or widening of the highway; (b) works carried out in exercise of the powers conferred by section 64 of the Highways Act 1980 (dual carriageways and roundabouts); (c) substantial alteration of the level of the highway; (d) provision, alteration of the position or width, or substantial alteration in the level of a carriageway, footway or cycle track in the highway; (e) the construction or removal of a road hump within the meaning of section 90F of the Highways Act 1980; (f) works carried out in exercise of the powers conferred by section 184 of the Highways Act 1980 (vehicle crossings over footways and verges); (g) provision of a cattle-grid in the highway or works ancillary thereto; or (h) tunnelling or boring under the highway" |
| Major transport | As defined in section 91(2) of NRSWA, "major transport works means |

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| works | substantial works required for the purposes of a transport undertaking and executed in property held or used for the purposes of the undertaking" |
| Minor activities | As stated in section 9.2.3, minor activities are those activities other than immediate activities where the planned duration is 3 days or less. |
| National Land and Property Gazetteer (NLPG) | Gazetteer providing a national reference of land and property related data |
| Nationally consistent street gazetteer (NSG) | A database defined as "an index of streets and their geographical locations created and maintained by the local highway authorities" based on the BS7666 standard |
| Network management duty | As stated in Part 2 of TMA |
| Notice management system | As stated in section 3.1, notice management systems receive electronic street works notices and are used by street authorities to manage them together with other relevant information. |
| NRSAWA | New Roads and Street Works Act 1991 |
| NSG Concessionaire | The body appointed to manage the NSG on behalf of the local highway authorities |
| ODD | operational district data |
| Opening (the street) | Removing a lid or cover to a manhole, inspection chamber, meter box or other structure embedded in the street without any "breaking up" of the street |
| Ordnance Survey Grid | A spatial location based on the geospatially referenced national grid owned by the Ordnance Survey |
| OSGR | Ordnance Survey Grid Reference |
| Passenger Transport Authority | One of seven authorities (Greater Manchester, Merseyside, South Yorkshire, Strathclyde, Tyne & Wear, West Midlands and West Yorkshire) made up of representatives from local authorities in the area, responsible for public transport in their area |
| Passenger Transport Executive | The executive arm of a Passenger Transport Authority |
| Pedestrian Planning Order | This refers to an order made under section 249(2) or (2A) of the Town and Country Planning Act 1990(6) |
| Permit | The approval of a permit authority for an activity promoter to carry out activity in the highway subject to conditions |

(6) 1990 c.8. [].

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| Permit application | See Chapter 10. The application that is made by a promoter to the authority to carry out an activity in the highway. It is equivalent to the notice of proposed start of works (section 55 of NRSWA) given under the Coordination regime. |
| Permit Authority | A local authority or other "street authority" which has been given approval by the Secretary of State to operate a permit scheme on all or some of its road network. See Chapter 7. |
| Permit Management System | A computer based system to record permit applications and consents |
| Permit Scheme | A scheme approved by the Secretary of State under which permits for activities are sought and given. See Chapter 1. |
| Prescribed | As defined in section 104 of NRSWA, "prescribed means prescribed by the Secretary of State by regulations, which may (unless the context otherwise requires) make different provision for different cases" |
| Protected street | As stated in section 5.2.2, any street that serves a specific strategic major traffic need and therefore needs to be protected from unnecessary excavation and works and providing there is a reasonable alternative route in which undertakers can place the equipment that would otherwise lawfully have been placed in the protected street. |
| Provisional Advance Authorisation | The early approval of activities in the highway, equivalent to the advance notice given under s 54 of NRSWA. See 10.8. |
| Provisional street | As stated in section 4.2.3. a provisional street is a street that does not yet have an entry in the NSG. Typically these will be newly created and/ or private streets |
| Public sewer | Public sewer has the same meaning as in the Water Industry Act 1991 |
| Railway | As defined in section 105(1) of NRSWA, "railway includes a light railway other than one in the nature of a tramway" |
| Reasonable period | As defined in section 74(2), "a reasonable period means such period as is agreed by the authority and the undertaker to be reasonable or, in default of such agreement, is determined by arbitration to be reasonable, for completion of the works in question" |
| Reasonable times | As stated in section 3.6.1, reasonable times may be taken to mean normal office hours (08:00 to 16:30, Monday to Friday except Bank Holidays) |
| REC | Regional electricity company |
| Registerable | As stated in 9.1, registerable activities correspond to specified works in the regulations. |
| Reinstatement | As defined in section 105(1) of NRSWA, "reinstatement includes making good" |
| Relevant authority | As defined in section 49(6) of NRSWA, "references in this Part to the relevant authorities in relation to any works in a street are to the street authority and also (a) where the works include the breaking up or opening of a public sewer in the street, the sewer authority; (b) where the street is |

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| | carried or crossed by a bridge vested in a transport authority, or crosses or is crossed by any other property held or used for the purposes of a transport authority, that authority; and (c) where in any other case the street is carried or crossed by a bridge, the bridge authority" |
| Remedial work | As stated in section 9.3. remedial works are those required to put right defects identified in accordance with the provisions of the Code of Practice for Inspections and regulations |
| Road | "highway" |
| Road category | This means one of the road categories specified in paragraph 1.3.1 of Chapter S.1 of the code of practice entitled "Specification for the Reinstatement of Openings in Highways" dated June 2002 and approved by the Secretary of State for Transport on 30 th June 2002, as revised or re-issued from time to time |
| Road works | Works for road purposes |
| Schema | (XML) Schemas express shared vocabularies and allow machines to carry out rules made by people. They provide means for defining the structure, content and semantics of XML documents. |
| Sewer | Sewer as defined in the Water Industry Act 1991 " includes all sewers and drains (not being drains within the meaning given by this subsection) which are used for the drainage of buildings and yards appurtenant to buildings". |
| Sewer authority | As defined in section 89(1)(b) of NRSWA, "sewer authority, in relation to a public sewer, means the sewerage undertaker within the meaning of that Act in whom the sewer is vested" |
| Special Engineering Difficulties (SED) | As stated in 5.3.1, by virtue of section 63 of NRSWA, the term special engineering difficulties relates to streets or, more commonly, parts of streets associated with structures, or streets or extraordinary construction where street works must be carefully planned and executed in order to avoid damage to, or failure of, the street itself or the associated structure with attendant danger to person or property. |
| Standard activities | As stated in 9.2.2. standard activities are those activities, other than immediate activities, that have a planned duration of between 4 and 10 days inclusive |
| Statutory right | As defined in section 105(1) of NRSWA, "statutory right means a right (whether expressed as a right, a power or otherwise) conferred by an enactment (whenever passed or made), other than a right exercisable by virtue of a street works licence" |
| Street | As defined in section 48(1) of NRSWA, "street means the whole or any part of any of the following, irrespective of whether it is a thoroughfare (a) any highway, road, lane, footway, alley or passage; (b) any square or court; (c) any land laid out as a way whether it is for the time being formed as a way or not" |
| Street authority | As defined in section 49(1) of NRSWA, "the street authority in relation to a street means, subject to the following provisions (a) if the street is a |

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| | maintainable highway, the highway authority, and (b) if the street is not a maintainable highway, the street managers" |
| Street managers | As defined in section 49(4) of NRSWA, "the expression "street managers", used in relation to a street which is not a maintainable highway, means the authority, body or person liable to the public to maintain or repair the street or, if there is none, any authority, body or person having the management or control of the street" |
| Street works | As defined in section 48(3) of NRSWA, "street works means works of any of the following kinds (other than works for road purposes) executed in a street in pursuance of a statutory right or a street works licence: (a) placing apparatus; or (b) inspecting, maintaining, adjusting, repairing, altering or renewing apparatus, changing the position of apparatus or removing it, or works required for or incidental to any such works (including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street" |
| Street works licence | As stated in section 50(1) of NRSWA, "the street authority may grant a licence (a "street works licence") permitting a person (a) to place, or to retain, apparatus in the street, and (b) thereafter to inspect, maintain, adjust, repair, alter or renew the apparatus, change its position or remove it, and to execute for those purposes any works required for or incidental to such works (including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street) |
| TMA | The Traffic Management Act 2004 |
| Traffic | As defined in section 105(1) of NRSWA, "traffic includes pedestrians and animals" |
| Traffic authority | As defined in section 121A of the Road Traffic Regulation Act 1984: "(1)(a)The Secretary of State is the traffic authority for every highway in England for which he is the highway authority within the meaning of the Highways Act 1980 (1A) Transport for London is the traffic authority for every GLA road. (2) In Greater London, the council of the London borough or the Common Council of the City of London are the traffic authority for all roads in the borough or, as the case may be, in the City that are not GLA roads and for which the Secretary of State is not the traffic authority. (3) In England and Wales outside Greater London, the council of the county or metropolitan district are the traffic authority for all roads in the county or, as the case may be, the district for which the Secretary of State is not the traffic authority. |
| Traffic control | Any of the five methods of controlling traffic detailed in the Code of Practice "Safety at Street Works and Road Works" |
| Traffic flow | The number of vehicles using the particular street at specified times of the day and year, measured in accordance with DfT guidelines |

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| Traffic order | This means an order made under section 1, 6 or 9 of the Road Traffic Regulation Act 1984 |
| Traffic sensitive street | This means a street designated by a street authority as traffic sensitive pursuant to section 64 of NRSWA and in a case where a limited designation is made pursuant to section 64(3) any reference to works in a traffic sensitive street shall be construed as a reference to works to be executed at the times and dates specified in such designation |
| Traffic sign | As defined in section 105(1) of NRSWA, "traffic sign has the same meaning as in the Road Traffic Regulation Act 1984" |
| Tramway | As defined in section 105(1) of NRSWA, "tramway means a system, mainly or exclusively for the carriage of passengers, using vehicles guided, or powered by energy transmitted, by rails or other fixed apparatus installed exclusively or mainly in a street" |
| Transport authority | As defined in section 91(1)(a) of NRSWA, "transport authority means the authority, body or person having the control or management of a transport undertaking" |
| Transport undertaking | As defined in section 91(1)(b) of NRSWA, "transport undertaking means a railway, tramway, dock, harbour, pier, canal or inland navigation undertaking of which the activities, or some of the activities, are carried on under statutory authority" |
| Trunk road | As defined in section 329 of the HA 1980, "trunk road means a highway, or a proposed highway, which is a trunk road by virtue of section 10(1) or section 19 above or by virtue of an order or direction under section 10 above or under any other enactment" |
| Type 1 (or 2, or 3) gazetteer | As defined in the British Standard BS7666 |
| Undertaker | As defined in section 48(4) of NRSWA, "undertaker in relation to street works means the person by whom the relevant statutory right is exercisable (in the capacity in which it is exercisable by him) or the licensee under the relevant street works licence, as the case may be" |
| Unique street reference number (USRN) | As defined in the British Standard BS7666 |
| Urgent activities | As stated in section 9.2.4, urgent activities are (a) activities (not being emergency activities) whose execution at the time they are executed is required (or which the person responsible for the activity believes on reasonable grounds to be required) (i) to prevent or put an end to an unplanned interruption of any supply or service provided by the undertaker; (ii) to avoid substantial loss to the undertaker in relation to an existing service; or (iii) to reconnect supplies or services where the undertaker would be under a civil or criminal liability if the reconnection is delayed until after the expiration of the appropriate notice period; and (b) Includes activity that cannot reasonably be severed from such activities |
| Working day | As defined in section 98(2) of NRSWA, "for the purposes of this Part a working day means a day other than a Saturday, Sunday, Christmas Day, |

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| | Good Friday or a bank holiday; and a notice given after 4.30 p.m. on a working day shall be treated as given on the next working day" |
| Works | Street works or works for road purposes |
| Works clear | As stated in section 16.9, a works clear notice is used following interim reinstatement |
| Works closed | As stated in section 16.10, a works closed notice is used following permanent reinstatement |
| Works for road purposes | As defined in section 86(2) of NRSWA, "works for road purposes means works of any of the following descriptions executed in relation to a highway: (a) works for the maintenance of the highway; (b) any works under powers conferred by Part V of the Highways Act 1980 (improvement); (c) the erection, maintenance, alteration or removal of traffic signs on or near the highway; or (d) the construction of a crossing for vehicles across a footway or grass verge or the strengthening or adaptation of a footway for use as a crossing for vehicles" |
| XML | Extensible Markup Language |

Appendix B Not used

APPENDIX C WORKS AT OR NEAR LEVEL CROSSINGS

C.1 Purpose

Safety precautions for activities carried out in the street/road in the vicinity of Network Rail level crossings are described in legislation specific to street and road works and health and safety. These guidelines have been developed in the light of experience gained following incidents where collisions occurred from traffic tailing back across level crossings, even though the activity sites were a considerable distance away. The available advice has been brought together in this Appendix, to provide comprehensive guidance for all those carrying out activities at or near to level crossings.

C1.1 References within this Appendix to the **appropriate National Authority** refer to the Secretary of State for Transport

C.2 Scope

This appendix specifies requirements for the execution of all activities in the street/road at or near Network Rail level crossings. These should be identified in the National Street Gazetteer.

This appendix applies equally to all activity promoters who execute activities at or near level crossings. Access to, or work within, other Network Rail property is subject to separate safety requirements, details of which can be obtained from the normal Network Rail contact.

It applies to activities that take place within the boundary of the level crossing, in the highway immediately in the vicinity, or some distance away where traffic may tail back across the level crossing as a result of the traffic management system employed during the activity.

C.2.1 It does **NOT** apply to:

- a) Railways not owned by Network Rail. However, the advice is equally applicable to other railway authorities. It is strongly recommended that these principles be incorporated into appropriate arrangements for works at level crossings on railways not owned by Network Rail.
- b) Non-public road level crossings e.g. farm access where all relevant legislation should be taken into account when processing these works. For example:
 - Undertakers may have particular powers under their enabling legislation and wayleave or easement agreements may apply in a particular case.
 - Undertakers must ascertain what requirements apply before discussing their proposed works with Network Rail.
- c) Street running tramways.

A working party representing the Highway Authorities and Utilities Committee (HAUC) and Railtrack plc prepared the original guidelines. These have subsequently been revised for this document in co-operation with Network Rail Infrastructure Limited, HAUC-UK and DfT.

Network Rail is responsible for the maintenance of all infrastructure assets and for the day-to-day management of operations on the mainline railway. The provision of train services and associated activities are the responsibility of individual train operating companies.

Regional HAUCs in England should be the first point of contact for any queries relating to policy matters or interpretation of this Document. It is intended to post the addresses of Secretaries of Regional HAUCs on the HAUC(UK) website (www.haucuk.org).

C.3 Legislation

For activities at a level crossing, those undertaking the work must comply with the reasonable requirements of Network Rail made under Sections 93 and 152 of the New Roads & Street Works Act 1991. All parties concerned must comply with the reasonable requirements of Network Rail made under the Health and Safety at Work Act 1974 (HASWA) and its associated Regulations (in particular the Construction (Design and Management) Regulations 2007 (CDM) and Management of Health and Safety at Work Regulations 1999).

Where a permit scheme is in operation the relevant legislation is Part 3 of the Traffic Management Act 2004, and the Permit Regulations 2007. All the principles of this appendix also apply when a permit scheme is in operation.

C.4 Special Features of Level Crossing Work

C.4.1 Activities at or near level crossings

Activities at or near level crossings may impact upon one or more of the following:

- Safety of road users, pedestrians, railway passengers and personnel
- Train operation
- Structural integrity of the permanent way and other railway infrastructure assets
- Railway overhead traction cables, electrified third-rails and feeder or continuity cables
- Railway underground apparatus serving the railway and running parallel to it

All activity promoters and authorities have a duty to co-ordinate their activities and to follow the special safety precautions which apply at level crossings. Risk Assessments with continuous monitoring, are essential to safe operation of activities at or near to level crossings.

C.4.2 Safety of road users, railway passengers and employees

Risk assessments must be carried out both before and during activities at or near to level crossings in order to minimise the risk. Safe systems of work must be in place and maintained during the street works. Risk Assessments are further described in section C7.

Traffic that stops or moves slowly over a level crossing causes potential danger to road and rail users alike.

Particular attention must be paid to situations where activities may be a considerable

distance away from the crossing, as they may cause traffic tail backs over the crossing.

C.4.3 Other safety issues

When an activity is being carried out in the vicinity of overhead traction cables, electrified third rails and feeder or continuity cables, great care must be taken to avoid danger from electrocution. This is considered further in Section C8.

Electronic pipe and cable location equipment can potentially interfere with railway signalling apparatus and must not therefore be used within railway land without express permission from Network Rail, who will advise on the circumstances and type of equipment which apply at each level crossing that can be used at a particular location.

C.4.4 Network Rail's responsibility

Network Rail will decide, on the basis of the information received from activity promoters, whether the activity is likely to affect train operations and advise of the arrangements made. Network Rail's Special Requirements are further described in Section C8.

For activities at a level crossing, those undertaking the activity must comply with the reasonable requirements of Network Rail made under sections 93 and 152 of the Act. In view of the requirements of the Rail Regulator, timing directions given under sections 93 and 152 may entail considerable delays to the project, and therefore it is recommended that consultation with Network Rail take place at the earliest possible opportunity. All parties concerned must comply with the reasonable requirements of Network Rail made under the Health and Safety at Work etc, Act 1974 (HASWA) and its associated Regulations (in particular the Construction (Design and Management) Regulations 2007 (CDM).

The whole of Network Rail's rail network infrastructure is a continuous site for the purposes of CDM. When work is being planned to take place on or in the immediate vicinity of a level crossing, and in order for permission to be given for any activity to commence, Network Rail will require details of the activity and the competence of those employed to carry out the activity, and will advise contact details.

Network Rail must assess the possible effects of the activity on the permanent way (the railway track, sleeper, ballast or other foundation material) or adjacent Network Rail land, the level crossing surface, overhead catenary supports, signalling equipment and underground railway apparatus etc. and advise on the adoption of any additional measures required.

C.5 Designation

In order to assist activity promoters in fulfilling the obligations set out herein, it is recommended that the location of level crossings, and where applicable an associated Precautionary Area, where special controls will apply, should be identified and publicised using the National Street Gazetteer.

This information is to be provided in the form of a Special Designation File added, as appropriate:

- The National Street Gazetteer by Network Rail in accordance with the procedures laid down by the National Street Gazetteer concessionaire or,

Highway Authorities should cooperate with Network Rail in following the designation procedure set out below, in order to identify each level crossing and to establish an initial footprint of streets that will comprise the Precautionary Area.

Activity promoters should recognise that both NRSWA and HASWA require them to

consider the implications of their activities and identify the effects on traffic in the vicinity of level crossings. They should therefore co-operate in the initial establishment of the Precautionary Area and its development over time.

C.5.1 Identification of the Precautionary Area

Network Rail must identify individual level crossings, together with the Precautionary Area, and input this information into the National Street Gazetteer ASD data, including an indication of the position of the crossing, its type and whether any barriers are manually or automatically controlled.

Network Rail using the permit authorities' local knowledge and in co-operation with them and local promoters, will examine each crossing to identify those streets/roads associated with it that are likely to cause traffic tailbacks to the level crossing arising from activities carried out in the highway.

The exercise should identify each street falling wholly or partly within 200 metres of each crossing when following a route leading from the crossing.

The whole, or part of, each street identified above, will become part of the Precautionary Area and subject to special controls as described below. Minor modifications may be made at this stage, for example, the exclusion of one-way streets/roads with traffic flowing **towards** a level crossing.

C.5.2 Monitoring the Precautionary Area

The initial footprint of the Precautionary Area is to be kept under review by Network Rail, utilising the Highway Authority's local knowledge. Therefore, activity promoters are to check the National Street Gazetteer to ensure that they are aware of the extent of the current precautionary area.

C.6 Consultation

Permit Authorities have a duty under the Act to co-ordinate all kinds of activities in the street. Where this duty extends to activities that are likely to affect a level crossing, Network Rail must be included in the co-ordination exercise.

C.6.1 Co-ordination Meetings

Network Rail may be expected to attend Co-ordination meetings when they are promoting street works. Network Rail may also be expected to attend when advised of proposed activities that may affect level crossings.

C.6.2 Advance Consultation with Network Rail

Any planned activities which will take place at or near to a level crossing, or activities which are likely to affect the crossing because of traffic tailbacks (usually referred to by Network Rail as "blocking back"), must be advised to Network Rail's Outside Party Engineer for that location as early in the planning process as possible, but no later than one month in advance. The form shown in Annex A must be used for this purpose. The appropriate Outside Party Engineer can be identified from the map at Annex B

Upon receipt of an application for a provisional advance authorisation for proposed activities Network Rail should will endeavour to respond, within 10 working days, to acknowledge receipt of the advice and arrange to meet with the promoter to agree the special requirements to be included in the Health and Safety Plan for the activity. This meeting may take place at a Co-ordination Meeting or separately, depending on the nature and complexity of the proposed activity.

Confirmation of the agreed arrangements will be given to Network Rail in writing one month before the activity is intended to start. Network Rail should then give its approval of the arrangements to the activity promoter, within 10 days of receipt of the confirmation.

Activity promoters should also note that where the level crossing has been designated on behalf of by Network Rail under the Act as a street with Special Engineering Difficulty, a plan and section drawing showing details of their proposed activity that promoters may be required to accompany the application for a provisional advance authorisation described above, with a plan and section drawing showing details of their proposed activity.

C.6.3 Undertakers' Statutory Notices under the Act

Sections 93(2) or 152(2) of the Act require undertakers to give notice to Network Rail of the starting date of proposed activities which are to take place at a level crossing, notwithstanding that a permit application is not required.

C.6.4 Notification to Network Rail where a Permit Scheme is in operation

The notifications concerning any activity in the highway are given to the permit authority running a permit scheme under Part 3 of the TMA 2004 at the same period in advance of the start of works as for notices given under NRSWA.

The activity promoter must in those cases also give notice to Network Rail of any possible impact on their level crossings as for works carried out under NRSWA.

Works carried out in this fashion, which include works for road purposes carried out by the highway authority, should comply with all the requirements of this appendix.

C.6.5 Minimum Notice Periods

It is strongly recommended that application periods are treated as the minimum periods and, wherever possible, longer notice should be given. This is particularly important in the case of level crossings, where Network Rail may have to make special arrangements ranging from the provision of railway safety cover to complete closure of the rail route and rearrangement of rail services while the Street works take place.

C.6.6 Immediate Activities

Where it is necessary to carry out immediate activities at or near to a level crossing it is vital that the permit authority and local Network Rail office is contacted immediately and work is not commenced until the promoter has been assured that all necessary safety precautions are in place.

C.6.7 Street works licences permissions

Those without a statutory right to carry out street works must be authorised by the Street Authority (i.e. the Highway Authority or Street Managers) by means of a licence before works may commence. In addition, the holder of the licence may have to comply with the requirements of other relevant authorities or owners of apparatus affected by the work. In some cases it may be necessary to settle a plan and section. It is recommended that specific reference to this guidance should be made within licences for works in the vicinity of railway level crossings. Network Rail, as the Street Manager at the level crossing, will similarly ensure that the requirements of this guidance are followed when licences or permissions are issued.

C.6.8 Unqualified staff within the railway boundary

If it is necessary to use promoter's personnel to execute works within the track area they must not be allowed to enter until Network Rail nominated personnel have

arranged appropriate protection and confirmed that it is safe to do so (see Section C8).

C.7 Risk Assessments and Traffic Control

C.7.1 Codes of practice and other advice

The Code of Practice Safety at Street Works and Road Works issued under sections 65 and 124 of the Act is based on the Traffic Signs Manual (Chapter 8) and is a statutory requirement for promoters' activities. It specifies the basic requirements for signing, lighting and guarding and traffic control at activities in the highway.

Chapter 8 of the Traffic Signs Manual 2006 also gives specific advice on traffic control at railway level crossings.

C.7.2 Risk Assessments

Risk Assessments are a requirement of the Construction, Design and Management Regulations 2007 and Health and Safety at Work Regulations 1999 and it is particularly important that they are carried out at railway Network Rail level crossings.

Arrangements made as a result of Risk Assessments should be continuously monitored so that appropriate remedial measures can be taken quickly if required.

Risk assessments should take into account the distance of the crossing from the proposed activities and the volume of traffic using the road. Particular attention must be given to the possibility of traffic congestion tailing back over a level crossing at any time during the duration of the activity, for example during an all-red traffic light period imposed to allow difficult operations to take place at the work site. There have been instances where this situation has also arisen from activities that have been a considerable distance from the level crossing and this possibility should always be borne in mind during Street works.

C.7.3 Traffic Control Measures at or near Network Rail Railway Level Crossings

Traffic control at or near level crossings are to be in accordance with the guidance set out in Chapter 8 of the Traffic Signs Manual 2006

- Part 1 Design: D5.15.
- Part 2 Operations: O3.24

C.8 Network Rail's Special Requirements for All Activities Affecting the Permanent Way

Network Rail's Special Requirements must be followed in all cases where activities are to take place at a level crossing and should be included in any contract let in connection with the activity. The current version of this document may be obtained from Network Rail, who will also be able to give advice during the planning of activities.

There is no provision in the Act for the recovery of costs for special arrangements such as those described below and costs incurred by each party will therefore lie where they fall.

C.8.1 Level Crossing Attendant

A Level Crossing Attendant will ensure the crossing is cleared before lowering barriers and authorising a train to movement

C.8.2 Temporary Speed Restrictions

In some instances it may be necessary to impose a temporary speed restriction on trains. Temporary speed restrictions take time to arrange, so discussions with Network Rail should take place as early as possible, before any formal notice is given for the Street works. Where a temporary speed restriction may already have been arranged for other purposes, the highway authority, undertaker or other person should consider rearranging the timing of its activity so as to be able to make use of it, thereby minimising disruption to rail traffic.

C.8.3 Trenchless Construction

Where trenchless construction is to be employed beneath the railway track, Network Rail must approve the method. A temporary speed restriction may be imposed on trains and Network Rail may require to oversee activities in progress. Pipe bursting techniques will require special consideration by Network Rail, due to possible effects on the permanent way.

C.8.4 Activities on railway land that do not affect the structure of the permanent way

These are activities that do not affect the track or its surrounding land, such as work at a manhole, erection of poles and wires, pressure testing pipes which do not pass under the track or excavations several metres away from the track.

C.8.5 Activities outside the confines of a level crossing, using existing ducts which pass beneath the railway.

These activities may proceed without special early notification to Network Rail. However, Risk Assessments and Traffic Control as described in Section C7 must be followed.

C.8.6 Use of mechanical excavators and cranes near the railway

Network Rail will advise of any necessary precautionary measures whenever cranes, mechanical excavators, vehicles or other construction plant is to be operated close to railway traffic. The purpose is both to protect trains from accidental contact with the plant and to protect operators from the likelihood of death or serious injury arising from contact with live traction equipment and trains on the railway.

Network Rail may require the submission of plant operating diagrams and/or method statements, prepared by the plant operator and approved by the activity promoter, to enable it to decide the magnitude of any potential problems. These diagrams and method statements should take into account the possible results of machine failure, structural failure or uncontrolled operation of the plant.

C.8.7 Electrification continuity cables

In areas where the railway is electrified using the third rail system particular care must be taken to ensure that continuity cables, which connect the ends of the live rail to maintain electrical continuity, are not damaged whilst excavations are being undertaken. In most cases these will be laid parallel to the rails at, or just below, the adjacent ground level.

C.9 Reinstatement of the Road at Level Crossings

Where the Highway Authority resurfaces a road or carries out alterations on the approach to a level crossing, alterations should not be made to any signs or road markings which are a requirement of the Level Crossing Order, including carriageway and footway width and centre of carriageway markings on the approach to the

crossing. If alterations are required sufficient notice is required to permit Network Rail to request and obtain a revised Level Crossing Order.

C.10 New Works near Level Crossings

When promoters are proposing to install new supplies, routes should wherever possible avoid traversing level crossings. Where avoidance is not possible, trenchless methods of installation should be considered.

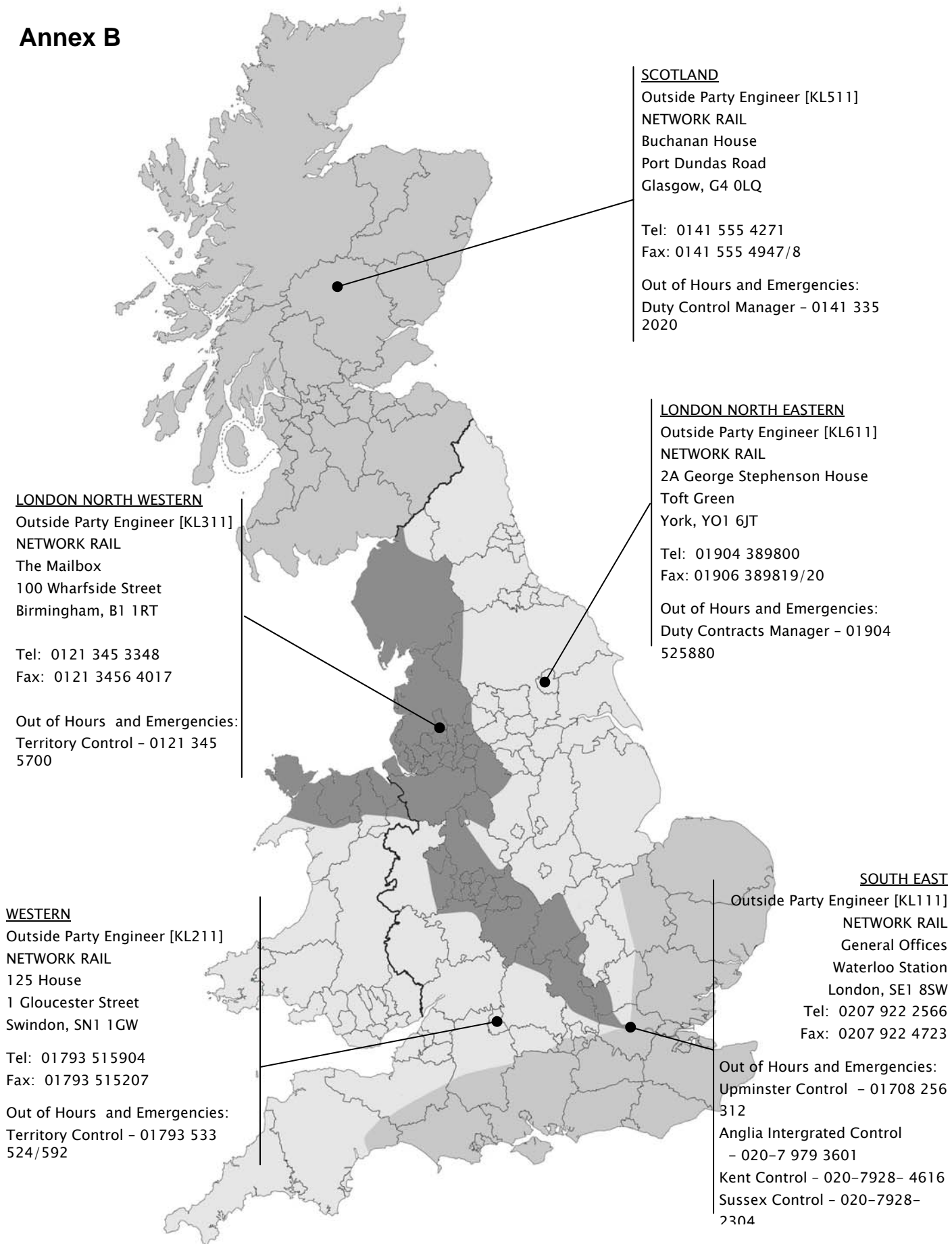
C.11 Health and Safety Executive, HM Railway Inspectorate Requirements

Specific attention is drawn to HM Railway Inspectorate Guidance Note, 'Railway Level Crossings' dated 1st May 2003 and the necessity to comply with the advice contained therein.

Annex A

| ADVICE OF INTENDED ACTIVITIES AT OR NEAR A RAILWAY LEVEL CROSSING | |
|--|--|
| To: (Name) (Company) (Address) Tel No: Fax No: Date: | From: (Name) (Company) (Address) Tel No: Fax No: Sender's Ref No: |
| <p style="text-align: center;">PRELIMINARY ADVICE</p> <p>Activities are proposed at/near the level crossing at: _____ (street/road name, railway line)</p> <p>Details of the activity are given in the attached description/ plan and section*.</p> <p>Intended start date of the activity</p> <p>Likely duration of the activity</p> <p style="text-align: right;">*delete as appropriate</p> | |
| <p style="text-align: center;">ACKNOWLEDGEMENT OF RECEIPT OF ADVICE (by Network Rail)</p> <p>Details of your proposed activity, Ref No: _____, has been received.</p> <p>The person dealing with the proposal is: _____ (Postal Address)</p> <p style="text-align: center;">Tel No: Fax No: E-Mail:</p> <p>The proposal has been given the Network Rail Ref No: _____</p> <p>*The activity is not yet approved. We will be in contact again by (date) _____ to arrange a meeting.</p> <p>*Please re-submit your proposal, it must incorporate Network Rail's Special Requirements, a copy of which is attached.</p> <p>*The activity may proceed in accordance with the Arrangements set out in your proposal. This Form and a copy of the Arrangements have been forwarded to the Highway Authority for their information.</p> <p>Signed for Network Rail _____ Date _____</p> <p>*delete as appropriate</p> | |

Annex B



APPENDIX D WORKS NEAR HIGHWAY STRUCTURES

D.1 Introduction

This appendix has been modified from a document prepared by the CSS (formerly the County Surveyors' Society) in consultation with HAUC (UK). It is addressed to all promoters involved in excavating the highway, particularly for the installation and maintenance of underground apparatus in the street in close proximity to highway structures, but would apply equally to any other engineering structure that might be affected by the activity. It reiterates the importance of prior local liaison and consultation as a means of avoiding subsequent problems. Although this appendix has been prepared by the CSS primarily for the protection of structures owned by highway authorities, the same principles apply to structures owned and maintained by other authorities, such as Network Rail, London Underground, the British Waterways Board and others, and therefore all references in this appendix to "highway structures" should be deemed to apply equally to structures associated with the highway but owned by other authorities.

D.1.1 Purpose

The purpose of this appendix is to recommend ways in which the risk of damage to highway structures from activities may be averted, firstly by providing information on how to identify structures, then to advise on safety measures to avoid damage occurring. It also seeks to promote uniformity of approach amongst street and bridge authorities and promoters towards the provision of services across or alongside highway structures. It reminds promoters of the special statutory arrangements already in place for many of these structures and draws attention to the presence of others which may nevertheless be at risk of damage and require special care to be taken during activities in the street.

In order to avoid damage to highway structures, personnel engaged in activity in the street should be able to:-

- a. appreciate the likelihood of highway structures being affected by the activity, the need for special care to be taken and the damage which can easily result from a moment's carelessness or ignorance.
- b. recognise types of highway structure and be aware of the problems and damage that can arise if the correct procedures are not followed and also be able to recognise parts of the structure that may be exposed by excavation during the activity .
- c. be aware that highway structures designated as being of Special Engineering Difficulty (SED) are subject to special statutory arrangements which set down the procedures which street authorities and promoters need to follow before the activity begins.
- d. be aware that other highway structures which may not have been designated as in (c) above, nevertheless require special care and consultation during the activity.
- e. be aware that traffic management arrangements during works may redirect traffic onto weak areas of a structure.

D.1.2 Scope

This appendix should be considered when new services are to be provided or when apparatus is to be exposed or maintained in proximity to any existing highway structure.

D.1.3 Background

Highway structures form an essential part of the highway infrastructure that require special consideration and care when work an activity is undertaken in the street.

Society expects the provision of services (electricity, gas, water, sewerage, telecommunications etc) each of which requires an extensive distribution network.

Space is often very restricted in and adjacent to highway structures and services may have to share a congested service bay within the structure. In order to satisfactorily install, operate and maintain services in such situations, the needs of the structure owner, street authority and undertakers must be jointly understood and appropriate precautions taken to minimise the risk of damage.

As with all guidelines, the interpretation and application of this appendix should be tempered at all times by good engineering judgement. The emphasis throughout is on the need for local liaison and consultation.

D.2 Highway Structures

Highway structures may be of various different forms, sizes and degrees of importance. They all need great care to be taken by those executing any activity in their vicinity. They may be composed of a variety of materials, e.g. brick, stone, concrete, steel, wrought or cast iron, timber or a combination of these and other materials.

They include, among other things: -

- bridges (road, rail)
- flyovers
- underpasses
- subways
- viaducts
- aqueducts
- culverts
- cattle-creeps
- cellars
- sign-gantries
- tunnels
- pipes
- corrugated steel pipes
- footbridges
- safety barriers
- retaining walls
- high mast lighting columns
- reinforced earth structures.

Highway structures are expensive and intricate, requiring great care and attention on the part of those installing services or repairing apparatus in their vicinity. What might appear to be minor and insignificant damage to a vital structural element may affect its safety and durability and thus substantially reduce the serviceable life of the structure. Such minor damage may remain undetected for years, but the consequences and the ultimate cost of repair could be severe.

Modern highway structures have a design life of 120 years. Most are unique, though a large proportion of structures will fall into one of a small number of structural types. Using a few basic principles and working methods will help to safeguard their structural integrity and preserve them from damage. Annex 1 shows typical structure types and restricted zones that may be designated by the owning authority.

Many are either scheduled ancient monuments or listed buildings, having protection under Acts of Parliament against unauthorised activities that may damage their archaeological importance or special architectural or historic interest. See Section D.4.

Particular care must be taken with the reinstatement of 'high amenity surfaces' on or adjacent to highway structures designated as scheduled ancient monuments or listed buildings or located in a conservation area where their contribution to the special architecture or historic interest may be very significant. The HAUC Specification for the Reinstatement of Openings in Highways (S8.3.2) gives the reinstatement requirements for high amenity surfaces.

Some structures are protected by a waterproof membrane to combat the effects of corrosive de-icing salts which may penetrate the road surface. The membrane may be mastic asphalt, rubber or polymerised sheet or a thin spray-on layer. Even minor damage to this during installation of a service can cause the problems highlighted in D.2 resulting in serious consequences to the integrity of the structure.

Similarly many structures have movement joints either at or below the carriageway surface to accommodate expansion and contraction. There are many different types of joint: some buried, some exposed, some open and some sealed to prevent ingress of water. Minor damage to these can also have serious long-term consequences to the integrity of the structure.

During the installation of services and maintenance of apparatus, the type of plant and equipment used for excavation and breaking out may potentially be very damaging to structures and their components unless operated with extreme caution.

During construction of a new bridge or major maintenance work to an existing bridge, effective planning and liaison between street authorities and undertakers will often prevent future disruption and possible damage if additional ducts are incorporated within the structure at an appropriate stage. Such arrangements are likely to be in the interest of all parties and are in accordance with the principles embodied in the HAUC Code of Practice *Measures Necessary Where Apparatus is Affected by Major Works (Diversionary Works)*.

When planning a traffic management scheme for an activity at or adjacent to a highway structure it is important to discuss signing, lighting and guarding arrangements with the street authority. Apart from following the requirements of the Code of Practice *Safety at Street Works and Road Works*, it is important to ensure that diverted traffic is not directed onto weak parts of the structure. It may also be necessary to erect screens to avoid debris falling through or over bridge parapets. It is also important to ensure that cables linking sets of temporary traffic signals used in connection with the activity are not allowed to sag over parapets and touch live overhead rail traction cables.

D.3 Prior Consultation

Section 88 of NRSWA imposes an obligation on an undertaker proposing any activity affecting the structure of a bridge to consult the bridge authority concerned (which may not necessarily be the street authority) before seeking a permit for the activity and to comply with the reasonable requirements for safeguarding the structure. Annex 2 provides an example of a suitable consultation form and shows the information the bridge authority may require.

D.4 Ancient Monuments and Listed Structures

Many highway structures are scheduled ancient monuments or listed buildings and protected against unauthorised activities that may damage their archaeological importance or special architectural interest. They range from milestones and mileposts to extensive medieval causeways and bridges. Great care is needed to avoid damage to these structures and almost invariably specific consent is required before work on them may be undertaken.

In some cases, from the nature of the structure, its listed status will be reasonably apparent, in others the activity promoter may know of it from previous experience. Additionally, except in those cases where prior notice is not required, the permit application will provide the permit authority with the opportunity to advise the promoter of the presence of a listed structure. These cases highlight the merit of early liaison and consultation between all parties in order to avoid delays and the possible contravention of the legislation.

D.5 Specification for the Reinstatement of Openings in Highways

Promoters are under a duty to carry out their street works to prescribed standards. The Specification provides guidance on excavation, backfilling and reinstatement of the highway.

D.6 Responsibility for Damage

Under section 82 of NRSWA a promoter must compensate a highway authority, other undertaker or any other relevant authority for loss caused by the execution of an activity. This obligation is subject to the proviso that the authority itself has not, by negligence or misconduct,

contributed to the loss. These provisions should encourage all parties to liaise and co-operate fully in all cases where it is known that sensitive structures may be at risk from any activity.

D.7 Recognition of Structures

Vigilance is required in the planning and execution of work. In the case of streets formally designated under section 63 as having special engineering difficulties the Regulations require details to be recorded by the permit authority in the permit register. Where there is no designation, the promoter may be aware of a structure from previous experience or local knowledge. In such instances he will be aware of the need for care in carrying out any activity and can advise operatives and contractors accordingly.

Many highway structures are large and easily recognisable but a great number are not apparent to the casual observer. Cellars, culverts and tunnels are frequently not visible from the road or verge and it is not unknown for excavation to damage underpasses or bridges without operatives becoming aware.

A highway authority should be able to provide the location of highway structures in its ownership of which it is aware. It may also be able to provide sources of other information held on privately owned structures. Reference may also be made to other available information such as Ordnance Survey plans and records of previous installations.

It is important that notification procedures are correctly followed. Unclear or inaccurate permit applications may mean that the authority is unable to spot a potential risk to a structure or, at best, unable to determine how a structure may be affected by the proposals.

Features to look for include coalholes, lower ground floors, basement accesses, light wells, manholes, or gardens at a lower level than the road. In rural situations, low points may indicate probable culvert locations where watercourses pass under the highway. In hilly terrain, retaining walls may be found which both support the road and adjacent land higher than the highway.

All activity promoters are reminded of their responsibility to recognise when their proposed activities will affect a structure and to consult the bridge authority before making an application for a permit.

D.8 Damage to Highway Structures

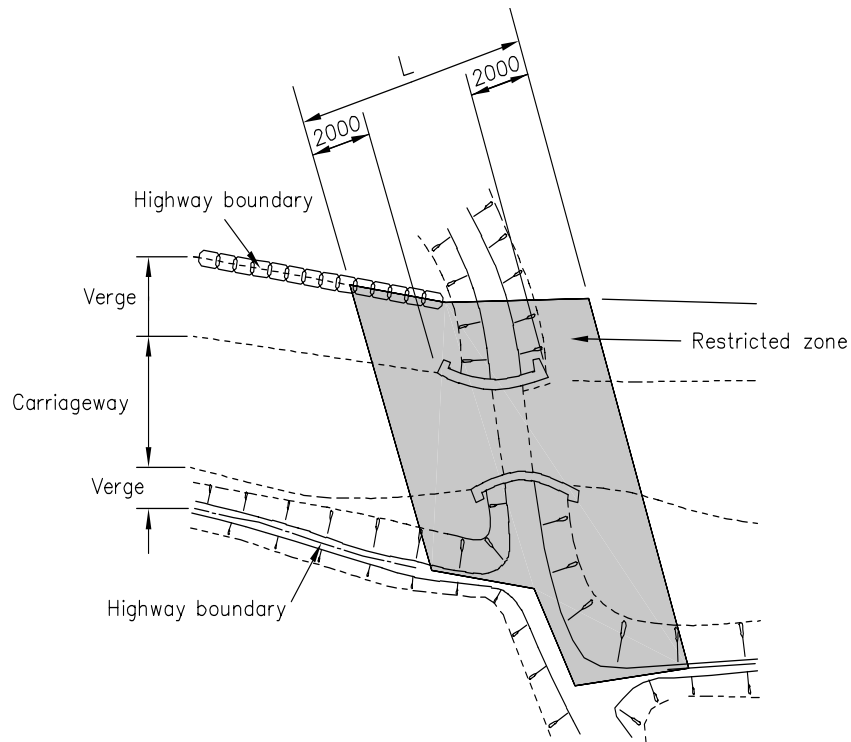
This appendix sets out the procedures and precautions that should be taken in order to avoid damage to highway structures during street works. It also stresses the fact that apparently minor and insignificant damage to a vital structural element may substantially reduce its serviceable life and seriously affect its safety.

Even after taking all procedures and safety precautions into account, there may be occasions when damage nevertheless occurs. When this happens it is absolutely essential that the authority owning the structure is advised of the damage without delay so that timely repairs may be carried out. Minor damage can sometimes remain undetected for years, whilst the serviceable life and safety of the structure will deteriorate and repairs, when they are finally made, will undoubtedly prove very much more extensive and costly than if carried out immediately.

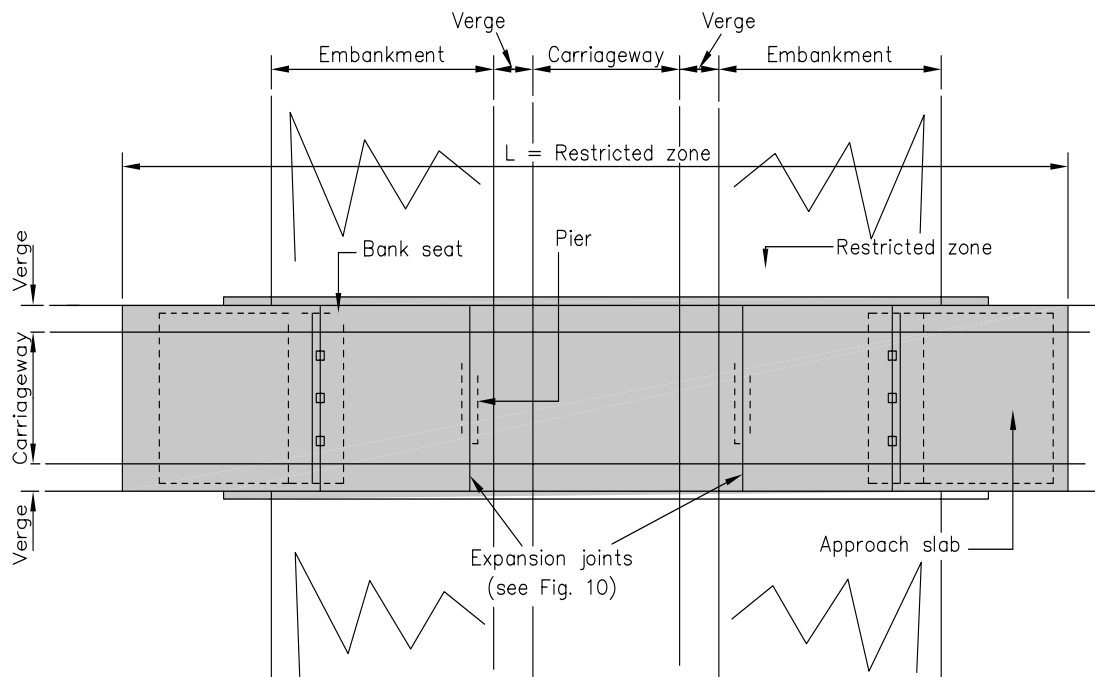
Annex 1

Typical Structure Types and Restrictions

- A. Figures 1 to 11 show some common types of highway structures that may be encountered, the terminology used, a typical Restricted Zone that may be designated by the owning authority, typical locations of bridge waterproofing membranes and some of the constraints that the authority may place on the installation of services within it. These are not exhaustive but purely indicative.
- B. Figure 1 shows a typical Restricted Zone that may be designated by a bridge authority. It will normally cover the entire width of the street and its length will extend 2 metres beyond each end of the parapet or rail. However, the extent of a designated Restricted Zone is subjective and all parties should adopt a flexible approach when considering individual circumstances to reduce the risk of damage to the structure during any activity.
- C. All dimensions in Figs. 1 to 11 are in millimetres.



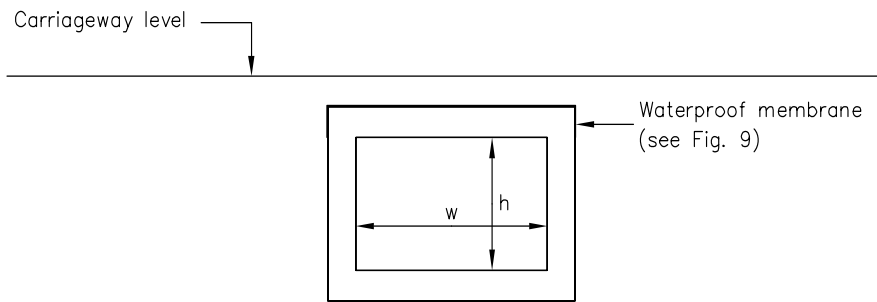
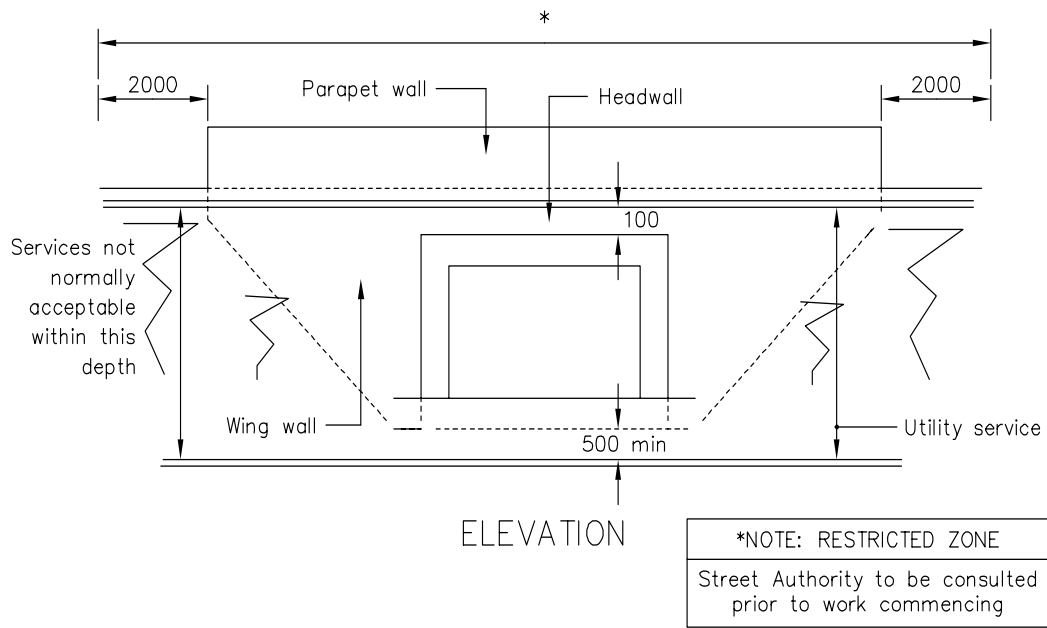
SINGLE SPAN ('OLD' ARCH OR CULVERT)



MULTI SPAN ('MODERN' BRIDGE)

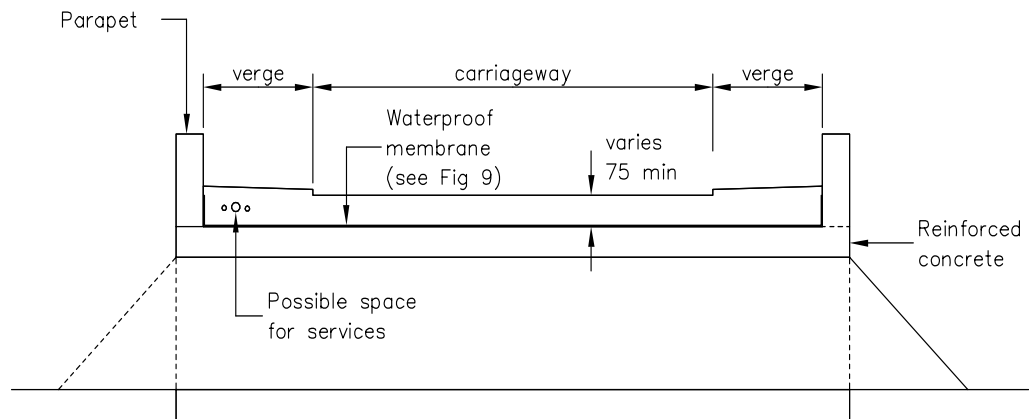
Fig 1
TYPICAL PLANS ON RESTRICTED
ZONES AT STRUCTURES

Not to scale



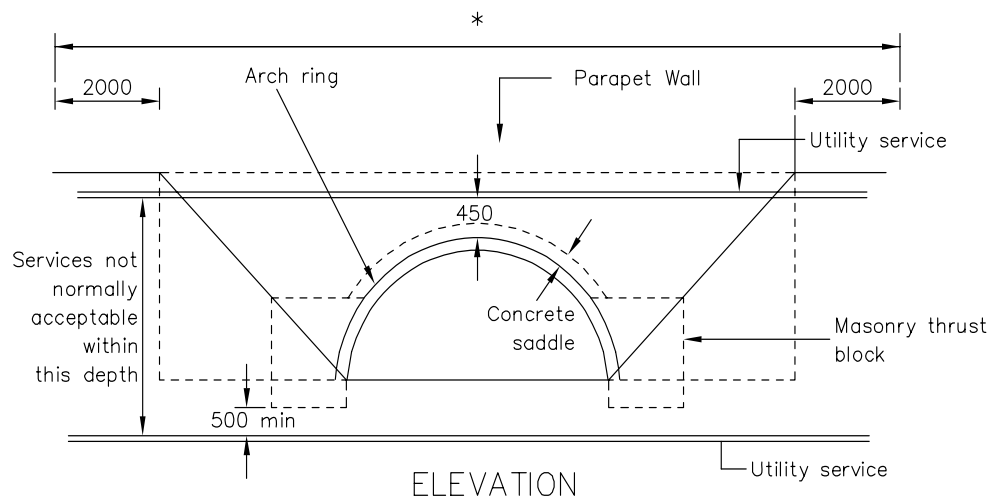
h - varies (0.75 - 3.0 m approx.)
w - varies (1.0 - 4.5 m approx.)

CROSS SECTION (Parallel to road)



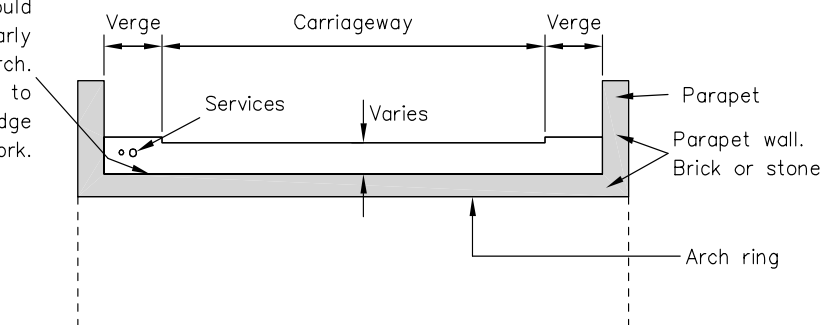
CROSS SECTION (At right angle to road)

Fig 2
TYPICAL SUBWAY / BOX CULVERT
Not to scale

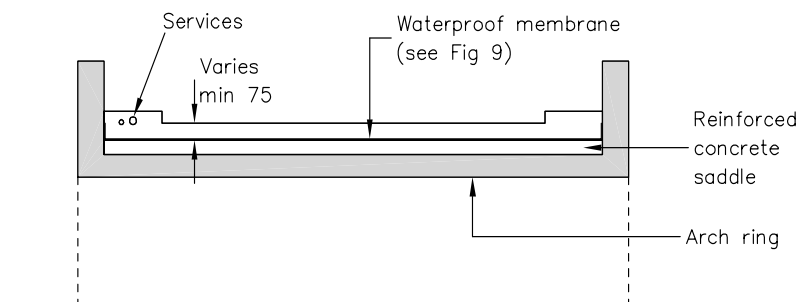


*NOTE: RESTRICTED ZONE
Street Authority to be consulted prior to work commencing

This surface could be jagged particularly if a stone arch. Care required not to damage or dislodge stonework.

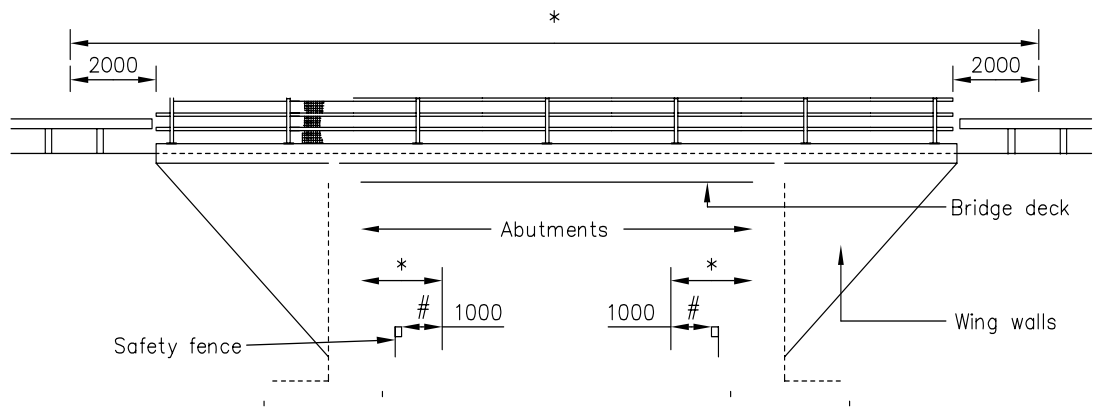


CROSS SECTION
(No concrete saddle or waterproofing)



CROSS SECTION
(With concrete saddle or waterproofing)

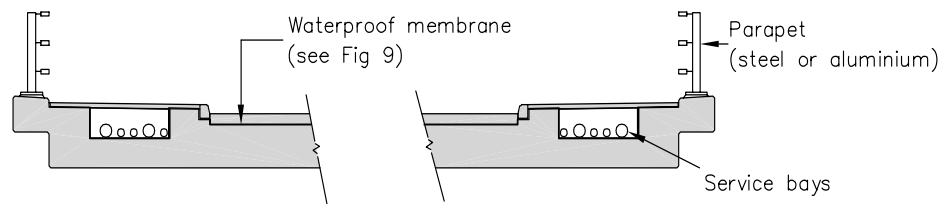
Fig 3
TYPICAL STONE/BRICK ARCH OR CULVERT
Not to scale



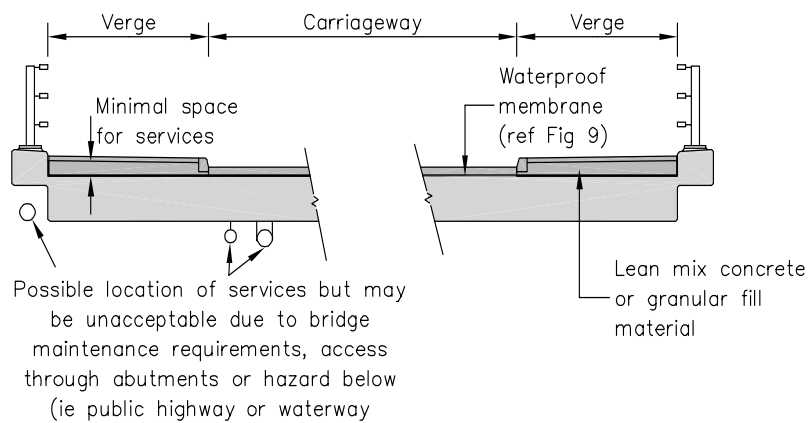
ELEVATION

| # NOTE: RESTRICTED ZONE |
|---|
| Restricted zone adjacent to safety fence refer Fig 11 |

| *NOTE: RESTRICTED ZONE |
|---|
| Street Authority to be consulted prior to work commencing |



SECTION – WITH SERVICE BAYS

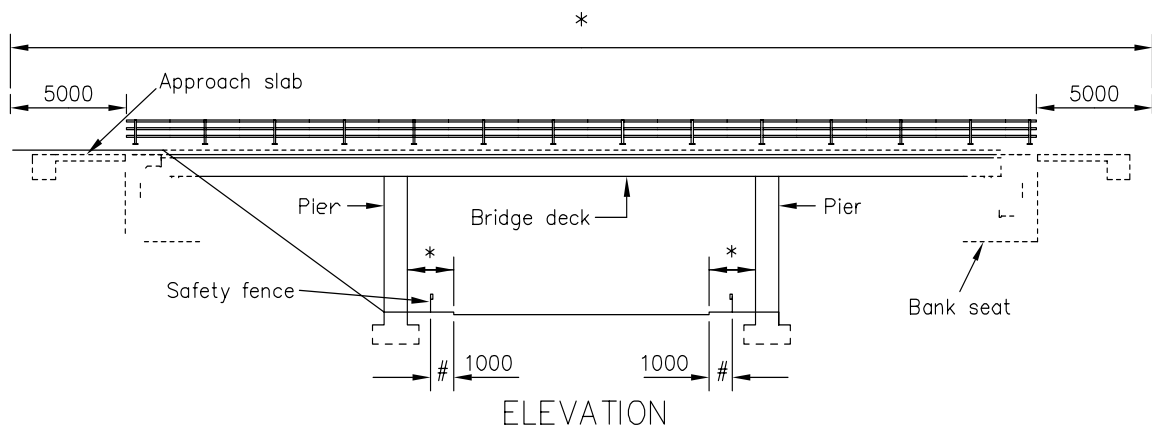


SECTION – NO SERVICE BAYS

Fig 4

TYPICAL SINGLE SPAN CONCRETE HIGHWAY BRIDGE

Not to scale



*NOTE: RESTRICTED ZONE
Street Authority to be consulted prior to work commencing

NOTE: RESTRICTED ZONE
Restricted zone adjacent to safety fence refer Fig 11

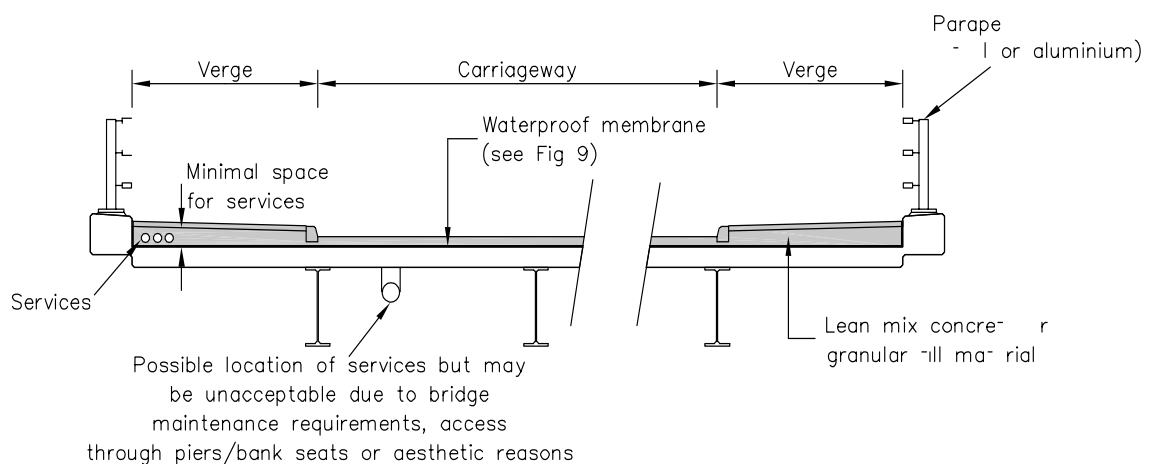
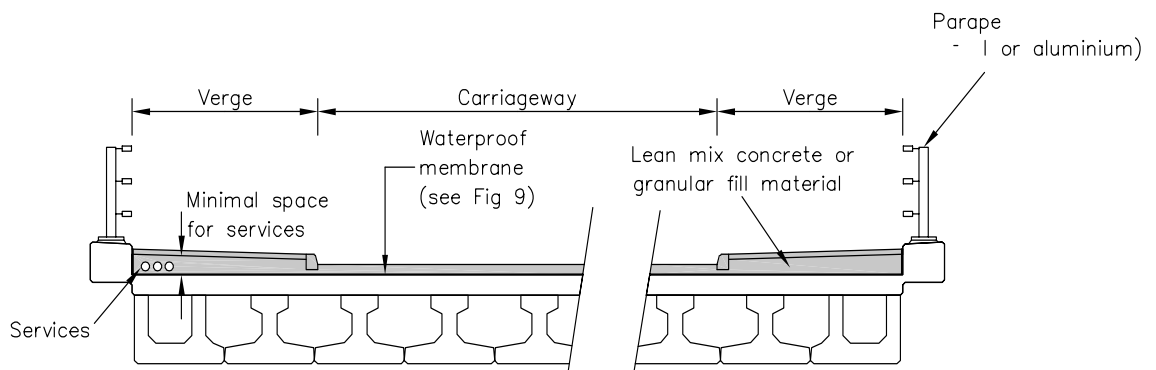
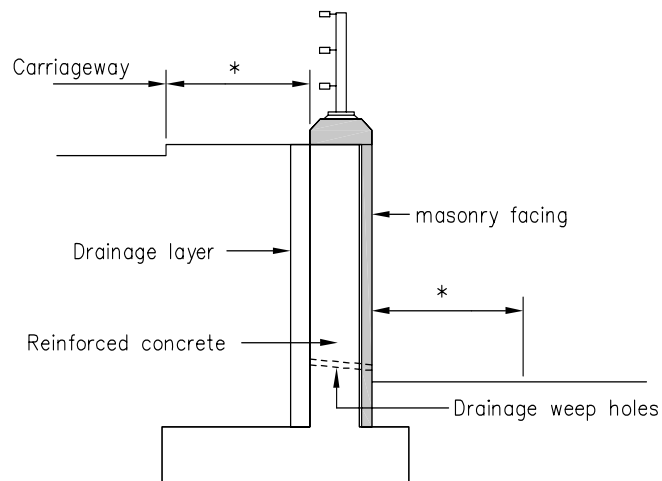
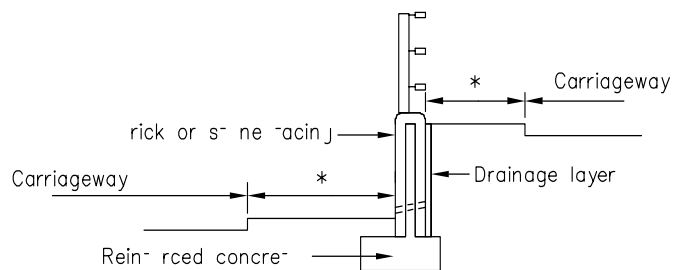


Fig 5
TYPICAL MULTI-SPAN STEEL-CONCRETE
COMPOSITE HIGHWAY BRIDGE

Not to scale



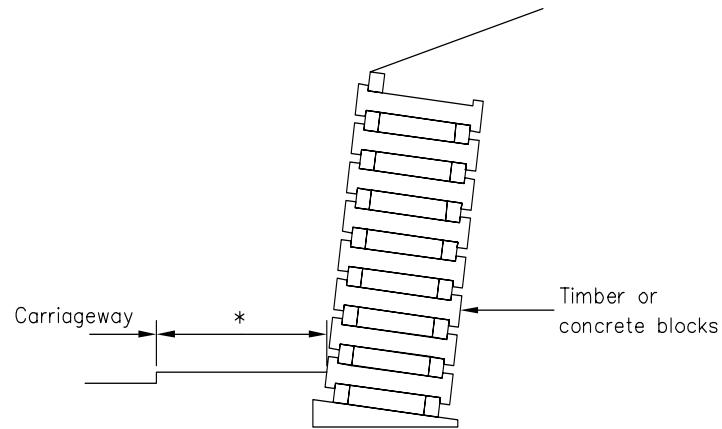
(a) REINFORCED CONCRETE WITH MASONRY FACING



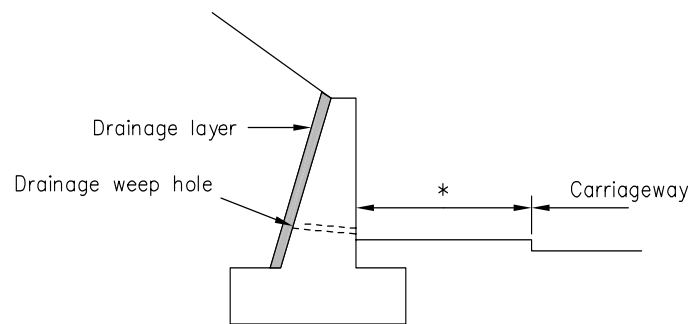
(b) REINFORCED BRICK OR STONEMWORK

| |
|--|
| *NOTE: RESTRICTED ZONE |
| Street Authority to be consulted prior to work commencing |

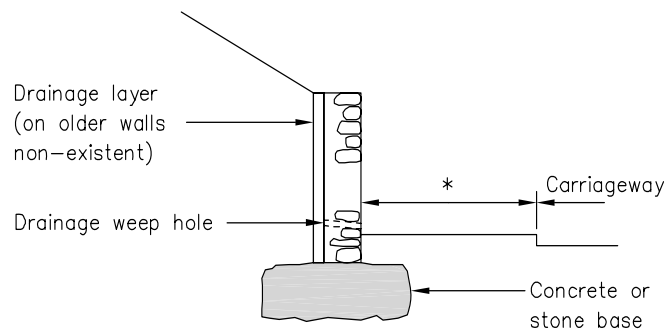
Fig 6
TYPICAL RETAINING WALLS
Not to scale



(c) CRIB WALL



(d) MASS CONCRETE



(e) STONE WALL

| |
|--|
| *NOTE: RESTRICTED ZONE |
| Street Authority to be consulted prior to work commencing |

Fig 7
TYPICAL RETAINING WALLS (continued)
Not to scale

| |
|--|
| *NOTE: RESTRICTED ZONE |
| Street Authority to be consulted prior to work commencing |

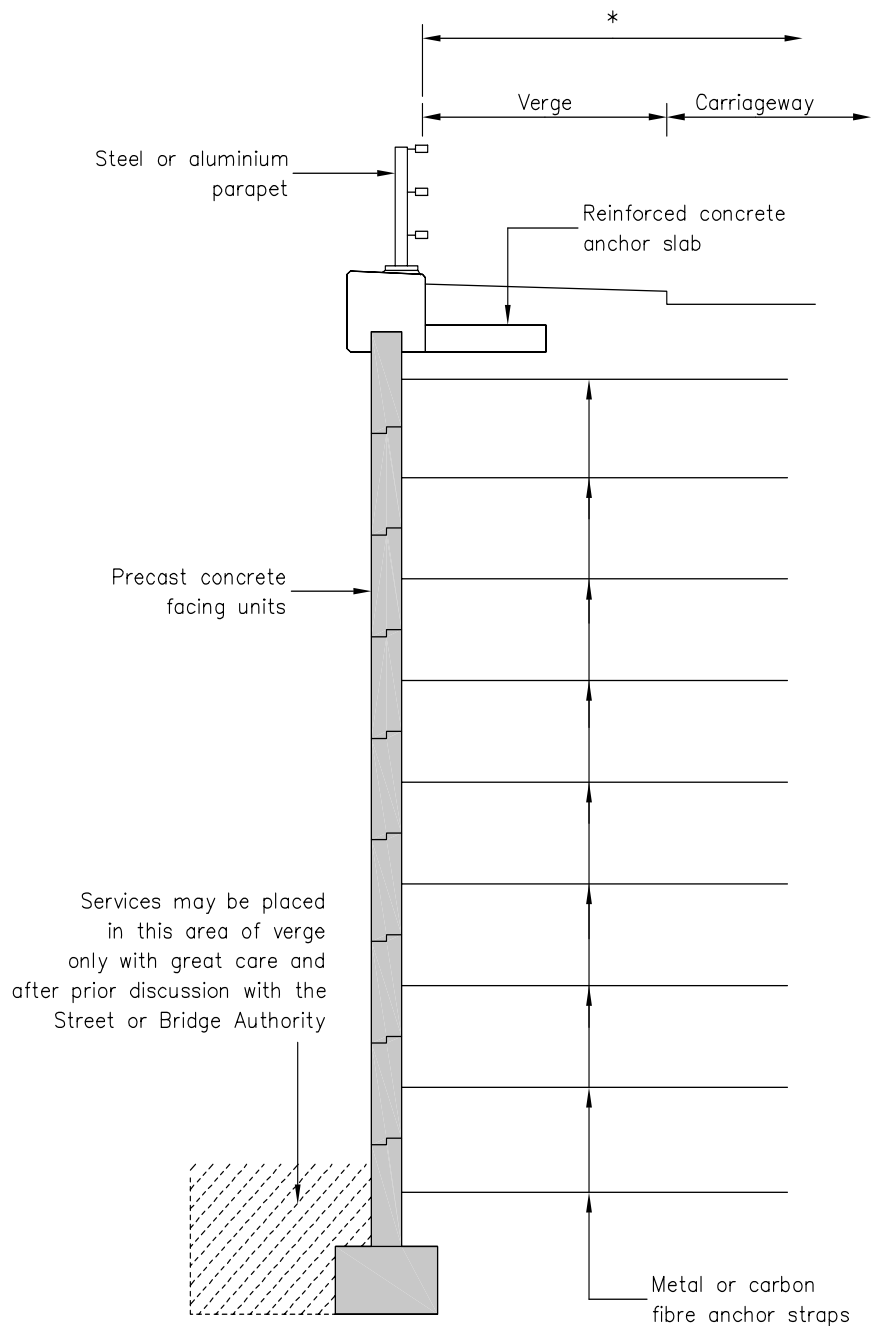


Fig 8
TYPICAL REINFORCED EARTH RETAINING WALL
Not to scale

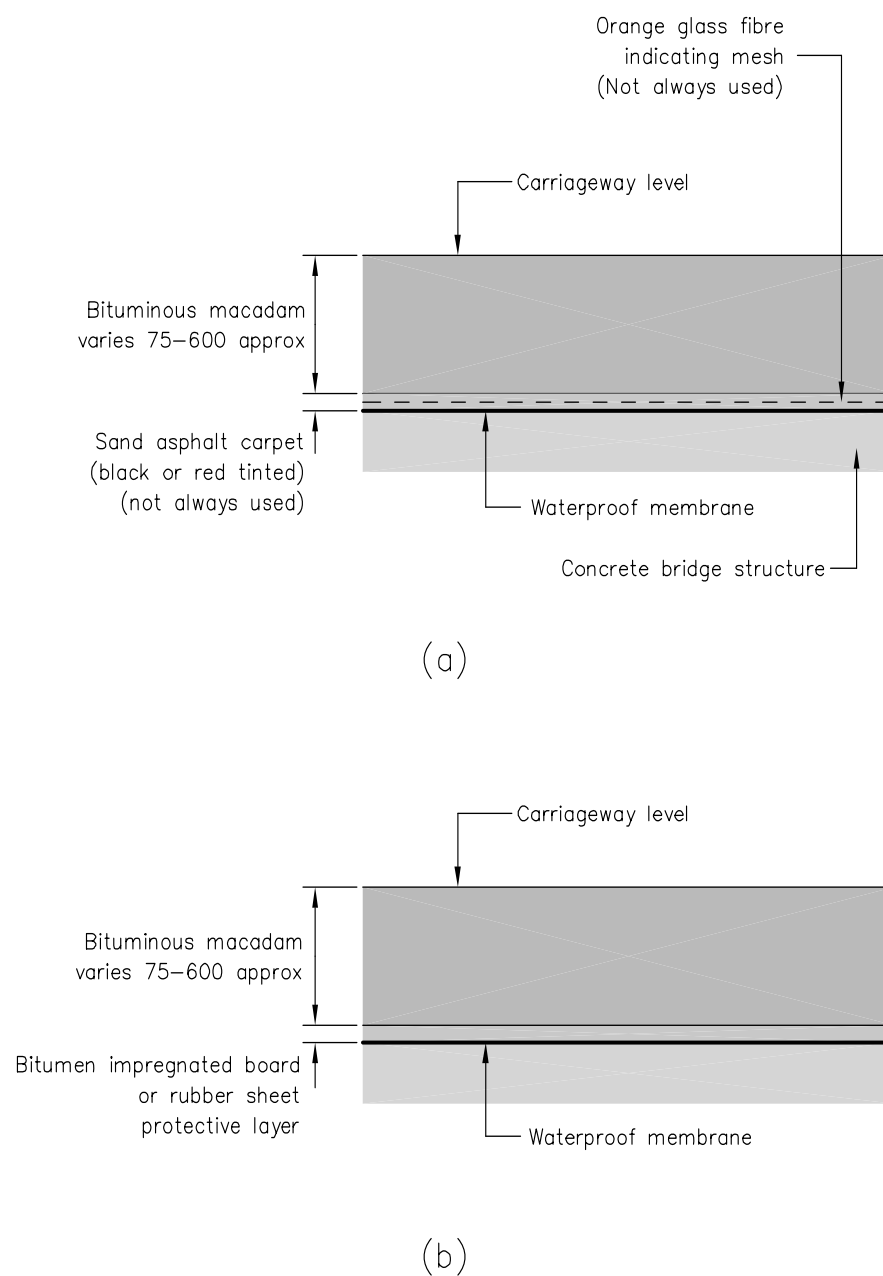
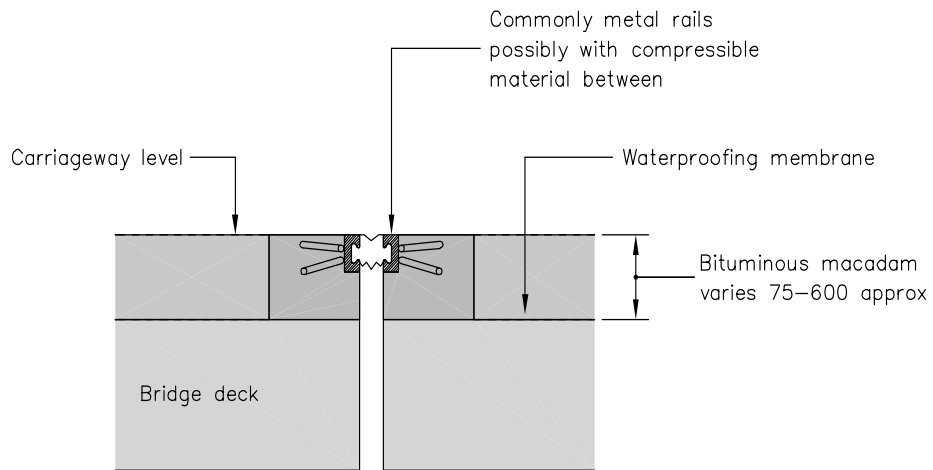
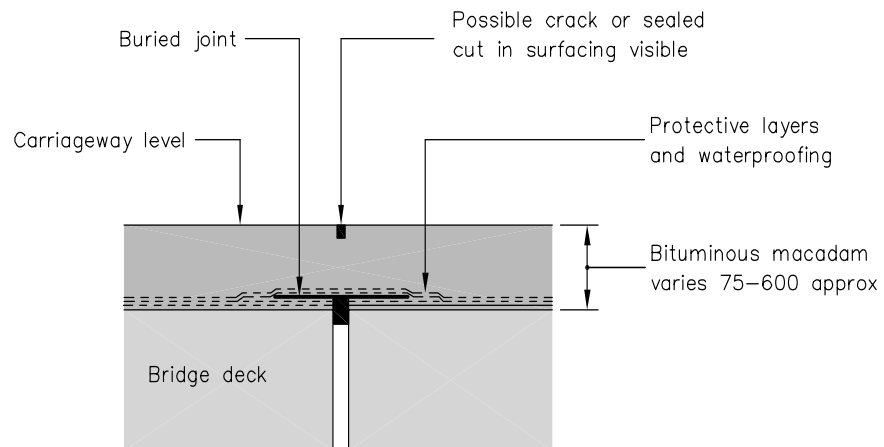


Fig 9
TYPICAL
WATERPROOF MEMBRANE PROTECTION TYPES
Not to scale

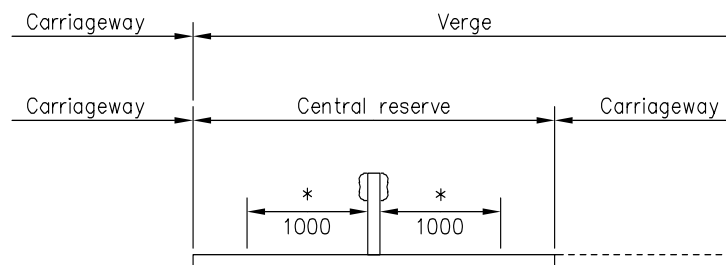


(a) EXPOSED JOINT



(b) BURIED JOINT

Fig 10
TYPICAL EXPANSION JOINTS
Not to scale



| |
|--|
| *NOTE: RESTRICTED ZONE |
| Street Authority to be consulted prior to work commencing |

Fig 11
TYPICAL SAFETY FENCE
No - ale

Annex 2

Example of Consultation Form for Special Engineering Difficulty

PROMOTER

.....

FACSIMILE TRANSMISSION

NEW ROADS AND STREET WORKS ACT 1991 AND TRAFFIC MANAGEMENT ACT 2004

To.....

From.....

.....

.....

.....

.....

Tel No

Tel No

Fax No

Fax No

File Ref

Contact.....

Contact

(if known)

DATE

PRELIMINARY CONSULTATION Relating to proposed works in Streets with Special Engineering Difficulty (section 63 & Schedule 4) or in the vicinity of Highway Structures (in the case of bridges, section 88)

LOCATION

.....

Plan Attached YES/NO* *(Please attach whenever possible)*

Plan No

Road Name/Number

OS Reference

Bridge/Structure No

DESCRIPTION OF PROPOSED ACTIVITY

.....

.....

.....

New/Renewal/Refurbishment*

Major/Standard/Minor*

Size and Type

.....

Proposed depth of excavation

.....

Proposed depth of cover to service on completion

.....

Expected start of activity

.....

BRIDGE AUTHORITY RESPONSE

File Ref

Please contact Tel No

Consent to proceed granted/not granted subject to*

.....

.....

Trial Holes required YES/NO*

Other.....

Additional details required (eg Plans, Sections, Method Statements):

.....

.....

.....

*Delete as appropriate

Signature

Bridge Authority to respond within 7 working days of receipt

Date.....

APPENDIX E: CO-ORDINATION SCHEDULES

The co-ordination of activities over longer periods is aided by the exchange of forward planning information. An EToN message type has been developed for sending forward planning information - this can be found in the Technical Specification for EToN.

Alternatively, promoters can send forward planning information about works electronically using the format in Table 2 below. Information should be provided in the order shown with the fields forming a horizontal row. The highway authority may need to reorder data before converting it into a CSV file for entry into the register. The six-digit grid reference number is important for providing reasonably accurate information on location of works.

| | |
|---|--|
| | Guidance notes. (Do not include guidance notes in spreadsheet) |
| Permit authority | |
| Operational district | |
| Activity promoter | |
| Date of last update | If applicable |
| Activity promoters reference | If applicable |
| Town | |
| Locality | |
| USRN | |
| Street name | |
| Road number* | Road classification number |
| Grid reference (Easting) | Approximately the centre point of the proposed works |
| Grid reference (Northing) | Approximately the centre point of the proposed works |
| Activity promoter contact name | Name of person who can answer queries regarding the works. |
| Activity promoter contact number | Telephone number of above |
| Activity description | |
| Activity position | When known. Carriageway = C. Footway = F. Verge = V. |
| Traffic management type | When known |
| Length of activity | When known |
| Width of activity | When known |
| Start date of activity | This may be just a financial or calendar year |
| End date of activity | This may be just a financial or calendar year |
| Notes | |
| *Road classification provides activity co-ordinators with information on a route basis. | |

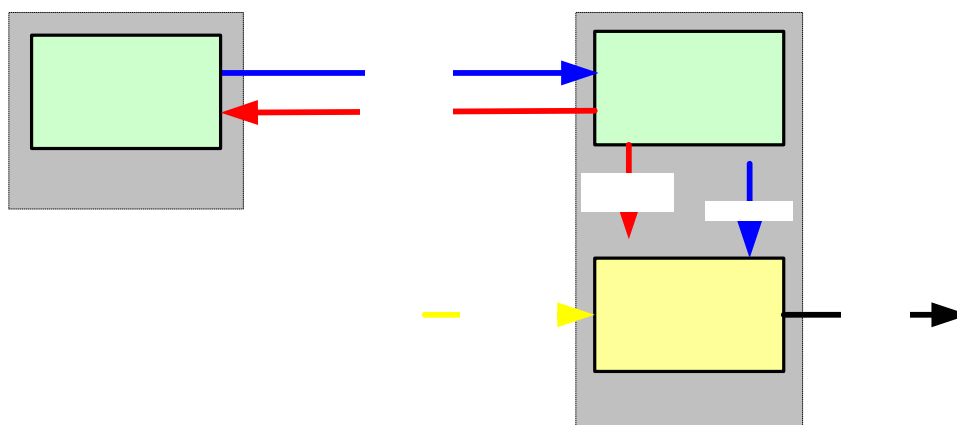
APPENDIX F: CENTRAL REGISTERS

F.1 Data formats

The format of data transferred to a central register from a participating permit authority is as described in Technical Specification for EToN i.e. the files sent to the register authority will be an exact copy of the file received or sent by the permit authority from or to an undertaker or permit applicant. It will also be the responsibility of the participating permit authority to send to the central register copies of all the files relating to their own activities, street works licences and such other information required under the central register regulations.

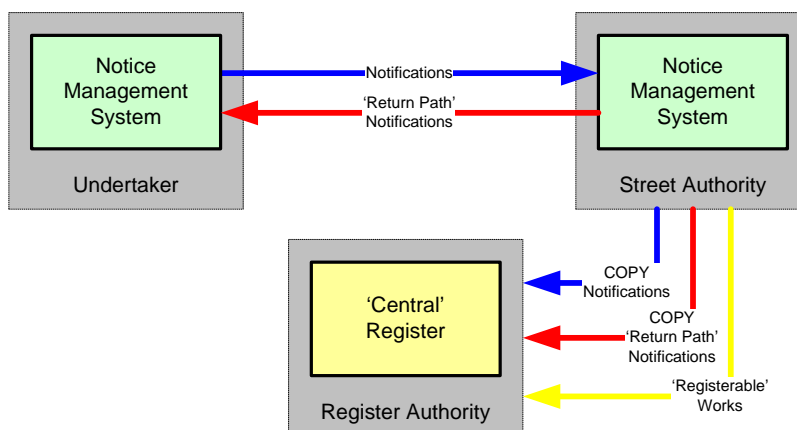
F.2 Data transfer arrangements - Local Registers

The following diagram describes the flow of information where a local register is in operation.



F.3 Data transfer arrangements – Central Registers

The following diagram describes the flow of information where a central register is in operation.



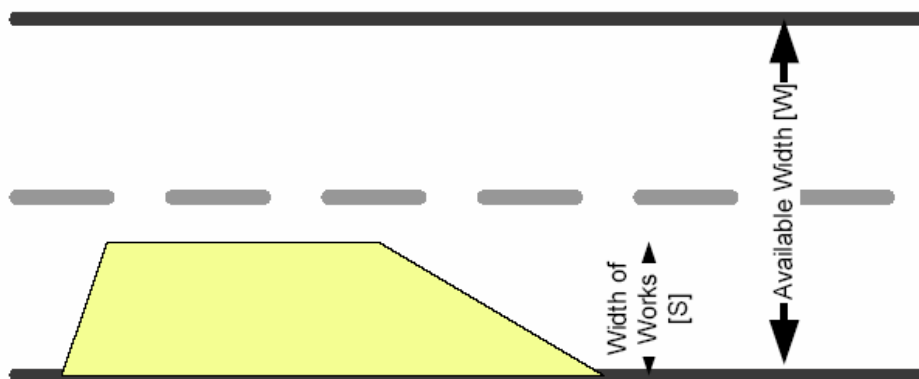
Note: Where the above diagrams say Notice Management System please read Permit Management System.

APPENDIX G: DERIVATION OF DISRUPTION EFFECT SCORE

G.1 Input Factors

The disruption effect score is based on the reduction in capacity resulting from an activity on the highway. The reduction in capacity may be calculated using an algorithm that requires the entry of a number of simple factors. These factors are as follows:

| Factor | Description |
|--------|---|
| [P] | The daily traffic flow, measured as an average am/pm peak hour flow in PCUs per hour, so that it takes account of HGV percentages. Source: Highway authority |
| [W] | The total width in metres of the carriageway (or the width of both carriageways for a dual carriageway road). Source: Ordnance Survey mapping using GIS tools |
| [S] | The width in metres of the activity occupying the carriageway, or in the case of activities on the footway, this would be the width in metres of the carriageway occupied by attendant vehicles and associated traffic management, as well as the width needed for any incursion of pedestrians, cyclists and horse riders into the carriageway. Source: Established as part of the works planning process |



G.2 Calculation of Disruption Effect Score

The following algorithm is used to calculate the Disruption Effect Score:

$$\text{Disruption Effect Score} = [(P \times 100) / (1600 \times (W - S) / 3.65)]$$

G.3 Use of Disruption effect Score

The disruption effect score has a number of specific uses including:

- i) Derivation of the Traffic Impact Assessment,
- ii) Objective based prioritisation of activities for co-ordination, and,
- iii) Performance indicators.

However, this is not a mandatory requirement.

G.4 Impact Assessment

The impact assessment is a broad indicator of the potential disruption that could arise from an activity on the highway.

G.4.1 Impact on General Traffic

The impact assessment for general traffic is derived directly from the daily disruption effect score for the activities, as follows:

| Disruption Effect Score | Impact |
|--|----------|
| Greater than or equal to 75 | Severe |
| Greater than or equal to 50 and less than 75 | Moderate |
| Greater than or equal to 25 and less than 50 | Slight |
| Less than 25 | None |

G.4.2 Impact on Buses

The impact assessment for bus traffic is assessed for defined bus routes only and is derived as follows:

| Disruption Effect Score / Factor | Impact |
|--|----------|
| Greater than or equal to 75 | Severe |
| Dedicated bus lane closed | Severe |
| Greater than or equal to 50 and less than 75 | Moderate |
| Dedicated bus lane diverted | Moderate |
| Greater than or equal to 25 and less than 50 | Slight |
| Less than 25 | None |

G.4.3 Impact on Pedestrians

The impact assessment for pedestrian traffic is derived as follows:

| Factor | Impact | | | | |
|--------------------|----------------------------|----------|----------|----------|----------|
| | Footway Hierarchy Category | | | | |
| | 1a | 1 | 2 | 3 | 4 |
| Closure | Severe | Severe | Severe | Severe | Moderate |
| Complete Diversion | Severe | Severe | Severe | Moderate | Slight |
| Partial Diversion | Severe | Severe | Moderate | Moderate | Slight |
| Narrowing >50% | Severe | Severe | Slight | Slight | None |
| Narrowing <50% | Severe | Moderate | Slight | None | None |

A 'complete diversion' of a footway is where a new route for pedestrians has been established,

for example where there is a requirement to cross the road to use the opposite footway.

A 'partial diversion' of a footway is where the route for pedestrians is diverted around the activity's site but remains on the same side of the road.

In addition, the impact of any activities on footways associated with urban transport facilities will be considered as 'severe'. For the purposes of this section these are any activities on footways that are within 100 metres of an entrance to a bus, tube, railway or tram station.

APPENDIX H: FIXED PENALTY NOTICES FORMS

For details of the Tables please see chapter 18

FORM OF FIXED PENALTY NOTICE

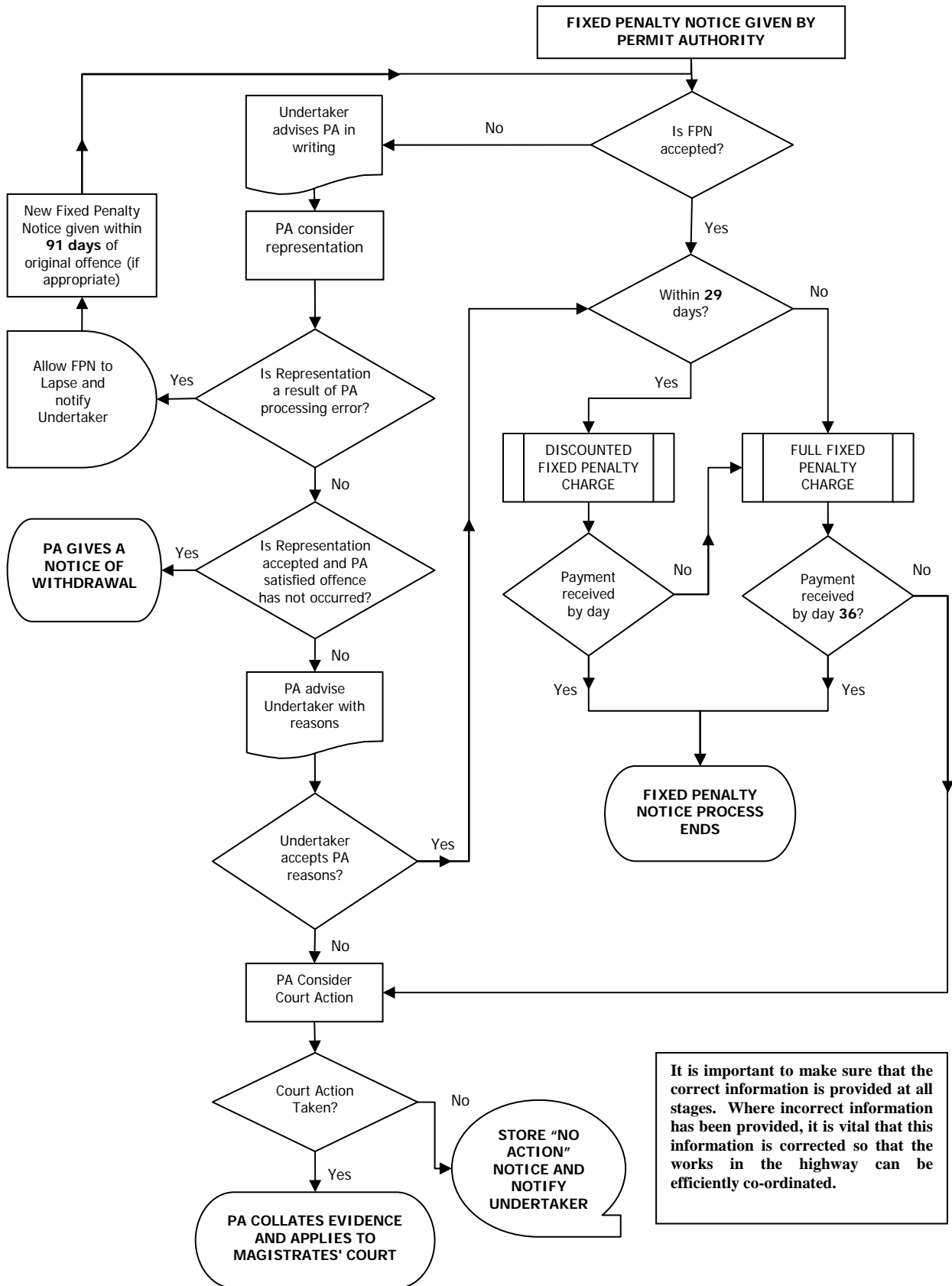
| | | |
|---|--|---|
| * (*Insert Permit Authority name) | FIXED PENALTY NOTICE [NAME OF PERMIT SCHEME ORDER] THE TRAFFIC MANAGEMENT PERMIT SCHEME (ENGLAND) REGULATIONS 2007 | FIXED PENALTY NOTICE Number: |
| PART A | | |
| Contact Tel No. | | Permit Reference No. * |
| TO: | | DATE OF THIS NOTICE: dd mm yy |
| ADDRESS: | | |
| OFFENCE CODE (See Part B) (NB: Only one offence code per fixed penalty notice) : | | |
| LOCATION: | | |
| DATE OF OFFENCE | | |
| DETAILS OF OFFENCE : | | |
| <p>1. I am giving you this notice, in accordance with Part 5 of the Traffic Management Permit Scheme (England) Regulations 2007, to offer you the opportunity of discharging any liability to conviction for this fixed penalty offence by payment of a penalty.</p> <p>2. This means that no legal proceedings will be commenced for the offence if, subject to paragraph 3, the penalty of [£500] [£120] is paid (See Part B for instructions on methods of payment) within the period of 36 days beginning with the day on which this notice was given. (NB: The permit authority may extend this period in any particular case if they consider it appropriate to do so (See regulation 24(3))).</p> <p>3. Instead of paying the amount referred to in paragraph 2, liability to conviction for the offence may also be discharged if the discounted amount of [£300] [£80] is paid within the period of 29 days beginning with the day on which this notice was given. (NB: If the last day of this period does not fall on a working day, the period for payment of the discounted amount is extended until the end of the next working day (See regulation 25(3))).</p> <p>4. If the discounted amount is not paid within the period set out in paragraph 3, as extended where relevant, liability to conviction for the offence may only be discharged thereafter by payment of the penalty of [£500] [£120] within the period set out in paragraph 2, as extended where considered appropriate. If you then fail to pay the penalty within that period, legal proceedings for the offence may be commenced against you.</p> <p>5. Any representations that you wish to make in relation to this notice may be addressed to _____ at _____ identifying the fixed penalty notice number stated above.</p> | | |
| NAME OF AUTHORISED OFFICER (in block capitals): | | |
| DATE : | | |

| PART B | | |
|---|--|---|
| * (* Insert Permit Authority name) | <u>INSTRUCTIONS ON METHODS OF PAYMENT</u> | FIXED PENALTY NOTICE Number: |
| ELECTRONICALLY – by the Bankers Automated Clearing Services (BACS). Payment should be made to _____, Sort Code _____, Account Number _____. Payment must be supported by the timely submission of a list of the fixed penalty notice numbers covered by the payment and the amount being paid in relation to each number. | | |
| “ON LINE” - please visit our web site at _____. | | |
| BY POST - by making your cheque payable to _____ and sending it to _____. Payment must be accompanied by a list of the fixed penalty notice numbers covered by the payment and the amount being paid in relation to each number. A receipt will be sent on request. | | |
| IN PERSON – to _____ at _____ between [9.00am and 4.30pm] on any day on which the office is open for business. Any cheque should be made payable to _____. Payment may be made by debit or credit card if the card is one that is accepted by the Permit Authority in accordance with its standard procedures. Payment must be accompanied by a list of the fixed penalty notice numbers covered by the payment and the amount being paid in relation to each number. A receipt will be provided on request. | | |
| BY TELEPHONE – by contacting _____ at _____ on _____ between [9.00am and 4.30pm] on any day on which the office is open for business. Payment may only be made by using a debit or credit card that is accepted by the Permit Authority in accordance with its standard procedures. You must state the fixed penalty notice number of each notice in respect of which payment is being made and the amount being paid in relation to each number. A receipt will be sent on request. | | |


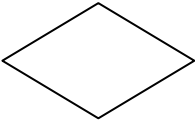

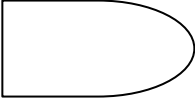

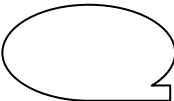

| OFFENCE CODES AND DESCRIPTION | | |
|---|-----------------------------------|--|
| (By reference to the Traffic Management Permit Scheme (England) Regulations 2007) | | |
| CODE | OFFENCE | BRIEF DESCRIPTION |
| PS01 | An offence under Regulation 19(1) | Undertaking specified works on a specified street without a permit where an applicable Permit Scheme requires one. |
| PS02 | An offence under Regulation 20(1) | Breaching a permit condition. |

FORM OF NOTICE WITHDRAWING A FIXED PENALTY NOTICE

| | | |
|---|--|---|
| <p style="margin: 0;">*</p> <p style="margin: 0;">(* Insert Permit Authority name)</p> | <p style="margin: 0;">NOTICE WITHDRAWING FIXED PENALTY NOTICE</p> <p style="margin: 0;">[NAME OF PERMIT SCHEME ORDER]</p> <p style="margin: 0;">REGULATION 27 OF THE TRAFFIC MANAGEMENT PERMIT SCHEME (ENGLAND) REGULATIONS 2007</p> | <p style="margin: 0;">FIXED PENALTY NOTICE</p> <p style="margin: 0;">Number:</p> |
| <p>TAKE NOTICE that the fixed penalty notice numbered as above is hereby WITHDRAWN.</p> | | |
| <p>NAME OF AUTHORISED OFFICER (<i>in block capitals</i>) :</p> | | |
| <p style="text-align: center;">DATE :</p> | | |



Explanation of chart

| | |
|---|---|
| 'Allow FPN to lapse'. | If the representations made by the undertaker are on the grounds that the PA had made an error on the FPN but the PA still believes that the grounds for giving the FPN were valid, the PA can allow the 36 day period to pass causing the FPN to 'lapse'. A PA is not able to give two FPNs for the same offence. The PA can then consider giving the FPN with corrected details provided that 91 days have not elapsed since the commission of the offence. |
| 'Store "No Action" Notice'. | If the undertaker refuses to pay the penalty but the PA decides not to commence proceedings in the Magistrates' Court, the PA should file the FPN as a "No Action" notice. |
|  | Process |
|  | Decision |
|  | Document |
|  | Delay |
|  | Predefined process |
|  | Sequential storage |
|  | Terminator |