

Statutory Guidance

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Traffic Management Act 2004

Statutory Guidance for Permits



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STATUTORY GUIDANCE FOR LOCAL HIGHWAY AUTHORITIES IN ENGLAND: PREPARATION OF PERMIT SCHEMES

Background

1. Part 3 of the Traffic Management Act 2004 (“TMA”) (sections 32 to 39) and the Traffic Management Permit Schemes (England) Regulations 2007 (“the Regulations”) are the pieces of legislation relevant to permit schemes in England. Separate regulations will apply to Wales.
2. This document is the guidance issued by the Secretary of State for Transport for the purposes of section 33(5) of TMA in respect of England, for which the Secretary of State is the “appropriate national authority”. Those local highway authorities preparing permit schemes in England must have regard to the guidance contained in this document when doing so. Separate guidance will be issued by the National Assembly for Wales as regards Wales.
3. Permit schemes will replace the “notice system” under the New Roads and Street Works Act (NRSWA) whereby utility companies inform highway authorities of their intentions to carry out works in their areas. At least initially, it is likely that management and control of works on the roads in England will be undertaken through a permit scheme in some areas but a notices system in others. It is, therefore, the intention to encourage the use of similar concepts to the notices system in a number of key areas e.g. road categories, works categories etc. This will hopefully ensure consistency, and facilitate better coordination.
4. Permit schemes must comply with the requirements set out in the Regulations. In addition, this guidance should also normally be followed to ensure, as far as possible, consistency of operation and common protocols between schemes and with areas where a notices system still applies. In this guidance, where the context requires for the preparation of permit schemes
 - “must” refers to a statutory requirement
 - “should” refers to things which are strongly recommended, especially for consistency between schemes and between promoters
 - “may” refers to things which the authority preparing a permit scheme should consider whether or not to includeIf an authority has a good reason for departing from the guidance, they should have early discussions with the Department for Transport – ideally before consulting on their proposed scheme more widely - to see if the proposed departures are likely to be acceptable.
5. Permit schemes are prepared by the relevant highway authority, but they do not take effect until the Secretary of State has made an Order giving effect to the scheme, with or without modifications. All the details of a scheme are in or attached to the Order, including where those details are required to be in a scheme by virtue of the Regulations or are recommended in the Statutory Guidance. The extent to which the Statutory Guidance has been followed will be taken into consideration by the Secretary of State in deciding whether to make an Order for a scheme.

Activities covered by permit schemes

6. One of the key principles of permit schemes is that they will treat all activities covered by a scheme on an equal basis. The present 2007 Permit Regulations provide for permit schemes to include both street works by statutory undertakers, as defined in NRSWA (this excludes street works licensed under s50 of NRSWA), and highway works, defined in s83 of NRSWA as works for road purposes. Although the term “works” is used generically in the Regulations, “activities” is used in this guidance to encompass both types of works and anticipates subsequent sets of regulations which may extend the scope of permit schemes to other activities on the street.
7. Authorities preparing permit schemes must include both highway and statutory undertakers’ works. All works comprising “registerable works” in terms of the 2007 Notices Regulations

under NRSWA should be included. Authorities should design their schemes to ensure, as far as possible, parity of treatment between both types of works.

Common elements with NRSWA notice system

8. As mentioned above, in order to facilitate working across local highway authority boundaries or in other places where permits and a NRSWA notice system may be operating side by side, it is important that authorities preparing permit schemes should use the same or equivalent definitions or requirements as are used in NRSWA notice system for:

- Registerable activities/works
- Categories of activities/works (major, standard, minor and immediate activities/works);
- Street gazetteers, including street referencing by means of Unique Street Reference Number (USRN) and Associated Street Data (ASD)
- Street reinstatement categories as defined in the NRSWA Reinstatement Specification
- The distinction between main roads and minor roads, where such distinctions are relevant
- Streets designated as protected, having special engineering difficulty or traffic sensitive

9. Under regulation 39, authorities operating permit schemes must be set up to receive applications, issue notices and otherwise communicate electronically. It is envisaged that all such communications relating to works on the highway will in future be made using the Electronic Transfer of Notices (EToN) system. Permit Authorities should design their permit schemes to operate in a manner which complies with the EToN Technical Specification.

Types of scheme

10. Authorities may apply to operate a permit scheme for all or some of their works. Options could include, for example

- require permits for all roads, including minor roads, each application scrutinised individually; or
- require permits for all roads but with the permit applications on minor roads dealt with on an exception basis (i.e. the terms of the application are assumed to be acceptable and the permit is issued in such terms unless certain elements of an application trigger an alert which prompts the Permit Authority to scrutinise that application individually); or
- require permits for main roads but use the revised NRSWA noticing regime on all other roads.

See Glossary for details of the distinction between main roads and minor roads.

11. However, it must be remembered that the Regulations do not allow permit schemes to apply to roads that are not maintainable highways – see regulation 8(2).

12. The TMA allows an authority to apply to operate a permit scheme over roads for which it is not the highway authority. Such a concept would normally be in the form of a joint permit scheme (see below). If an authority is considering any other arrangement involving another authority's roads, they should discuss this with the Department.

Joint permit schemes

13. A local highway authority can apply to operate a scheme solely on roads in its area. Alternatively, several authorities may choose to submit a joint application to operate a permit scheme over their combined areas. Such a scheme could be administered either by a single

authority acting on behalf of all the authorities or with each authority retaining responsibility for running the scheme within their boundaries.

14. In the case of proposals to run a joint scheme, applicants should show that they have fully discussed, and come to an agreement on, the way the scheme will be controlled and any fees apportioned. It is particularly important that the relevant authorities appoint a person to be responsible for financial accounting in relation to such a scheme, capable of issuing the relevant certificates under regulation 26(5). Additionally, applicants will have to demonstrate how each authority will meet their network management duty requirements whilst operating a joint permit scheme.

15. It is essential that applications to jointly run permit schemes should set out clearly how one of a consortium of authorities could leave the scheme and yet leave the other participants still running a scheme. These arrangements should also specify the period of notice needed before such a withdrawal could take place.

Common permit schemes

16. “Common” permit schemes (in contrast to joint permit schemes) refer to where a number of authorities in an area or region develop a common scheme which has a single set of “rules” but which each participating authority applies independently to their own roads, subject, of course, to normal cross boundary liaison and co-operation. As individually operated schemes these will require an application and an Order for each participating authority. However, it would be helpful if authorities intending such common schemes co-ordinated their applications where appropriate, and/or indicated that they were adopting a common scheme, including any such scheme already in operation in neighbouring authorities. Permit Authorities may consider it appropriate to co-operate on the consultation on the scheme, not least because many of the consultees will probably be the same. In doing so they must ensure that all the persons that must be consulted under regulation 3 for each of the participating authorities are included and that each authority gives appropriate consideration to the results of the consultation in relation to their own proposed operation of the common scheme.

17. Notwithstanding any such co-ordination and co-operation, each Permit Authority should separately demonstrate that they are in a position to operate a scheme for their roads in accordance with the requirements of the Traffic Management Act and the Regulations, ideally in a manner compatible with this guidance. Permit Authorities planning common schemes should liaise with the Department at an early stage

Creating and updating the National Street Gazetteer (NSG)

18. A key element of controlling or managing activities is knowing accurately where the activities are to take place – in which street and where in the street. There is already a nationally consistent street gazetteer system for identifying streets that is used under NRSWA whereby each street has a Unique Street Reference Number (USRN). Permit schemes should provide for the same system to be used, along with the Associated Street Data linked to those streets. USRNs can refer to a whole street (as identified on the ground) or, if the street is long, to part of a street between significant junctions. Permit schemes should provide that a “street” refers to that length of road associated with a single USRN, i.e. to part of a whole street where a street is subdivided. It is the responsibility of the local highway authority (which will normally also be the Permit Authority, either individually or jointly with others) to create, maintain and publish street gazetteer data for all streets within their geographical area, whether or not they are the street authority for any particular street

19. The specification for street gazetteers is set out in British Standard BS 7666. The Standard specifies three levels of detail, the highest - level 3 - including the geospatial representation of the centre-line of the street as well as the end points. With the degree of attention expected to be given by authorities operating a permit scheme, accurate locations will often need the centre-line information if the impact of activities are to be properly assessed. It is therefore

important that authorities wishing to run a permit scheme should therefore make sure that their street gazetteer is upgraded to level 3.

Registers

20. Under Part 7 of the Regulations the permit authority must maintain a register in connection with their permit scheme containing information with respect to all registerable activities on those streets. Permit Authorities will still need to run a street works register required under s53 of NRSWA for any private streets and for any publicly maintained streets that are not included in the permit scheme. Part 7 is designed so that the permits register contains equivalent information to that which would be required on the street works register under NRSWA. In practice, therefore, the two registers should be run in parallel, or combined in such a way that information can be sought both on individual streets – including identifying whether or not they are in the permit scheme – and across the network.

21. Again, in the interests of consistency, Permit Authorities should ensure that all information held in permit registers is referenced to the Elementary Street Unit Identifier, and the Unique Street Reference Number (USRN) and that permit registers follow the street works equivalent by becoming GIS (Geographic Information System) based by June 2008. Also, for the reasons given in paragraph 8 of this Guidance, Permit Authorities should follow the requirements in the Technical Specification for EToN.

Applications to operate a permit scheme

22. Regulation 3(1) requires a highway authority making an application to the Secretary of State to run a permit scheme to have carried out a full consultation in relation to the scheme. Those stakeholders that must be consulted are set out in regulation 3. In addition to those specifically listed, the Permit Authority must consult such other persons as it considers appropriate. This should include persons identified as having an interest in any of the streets covered by the permit scheme in the Associated Street Data for those streets.

23. Regulation 4 provides that a permit scheme application must contain certain information, not only about the scheme itself but how the authority will assess the impact of the scheme. One element of that assessment, covered in regulation 4(c), will be for the permit authority to demonstrate its non discriminatory approach to all activity promoters, as required in regulation 40. Key Performance Indicators (KPIs) will provide a high level measure to indicate that the Permit Authority is administering its own activities within the scheme in the same way as those carried out by statutory undertakers. A range of seven KPIs are described in the Permits Code of Practice. Of these, two should be used by authorities for all schemes, namely those providing measures for both highway and utility activities of:

- the proportion of un-withdrawn permit applications and permit variation applications granted and refused
- the proportions of different types of conditions attached to permits

At least two other KPIs of those shown in the Code of Practice should also be included to demonstrate parity of treatment. Additional KPIs not included in the Code may also be incorporated.

24. In addition to the requirements of regulation 4, the following additional information should be provided to assist in the Secretary of State's assessment of the scheme:

- an explanation of the Permit Authority's chosen design for the permit scheme, in relation to elements which are not required under the Regulations;
- when the Permit Authority will be in a position to start operation of its scheme (bearing in mind that, except in exceptional circumstances, the Department does not expect to bring a scheme into force less than four months after the application for approval is made);

- an explanation of how the permit scheme will work with other measures to enable the Permit Authority to meet its network management duty requirements.

25. Once an Order has been made giving effect to a permit scheme from a specified date, regulation 17 requires the Permit Authority to give a minimum of 4 weeks notice to all activity promoters within their area, and all those consulted on the proposed scheme as required by regulation 3. The Permit Authority should also provide details of the scheme, as it may be different from the scheme applied for, and details of any transitional arrangements, including not only such arrangements as have been provided for in the Order giving effect to the scheme, but also any practical steps which the Permit Authority proposes to take in order to ease the transition.

26. It is expected that the details of the Regulations will be known, and authorities are likely to start preparing for permits schemes, well before the Regulations are in force. Regulation 3(2) provides that consultation undertaken prior to the regulations coming into force may be taken into account for the purposes of consulting on proposed permit schemes. However, Permit Authorities should note that until the Regulations are made, they are subject to approval by Parliament and as such the Department cannot guarantee that they will remain as drafted.

Changes to permit schemes

27. It is possible that a Permit Authority may wish to change its permit scheme once it is in operation, for example, to include or exclude additional streets or to change their permit fee levels. Under regulation 5, the Permit Authority must apply to the Secretary of State if a change in the scheme is required with an explanation and justification of the changes that are proposed. If the Secretary of State agrees to the proposed changes, it will depend on the nature of the changes involved as to how quickly they can be brought into effect. Permit Authorities should liaise with the Department about this at an early stage.

28. Regulation 5 provides that changes to a permit scheme must be subject to consultation with the same group of consultees as the original scheme, although of course the appropriate consultation period may be less.

Ceasing to run a permit scheme

29. If a Permit Authority decides that they wish to cease running a permit scheme, they must first consult all interested parties and then apply to the Secretary of State to revoke the scheme in accordance with regulation 5. Authorities should bear in mind that until an Order is made by the Secretary of State revoking a scheme, that scheme will continue in operation. It is not possible for the Permit Authority to discontinue a permit scheme and re-establish a notice system in their area without the approval of the Secretary of State.

Permits

30. Regulation 9 states that where a permit scheme is in operation, the scheme must require that, except where an exception is explicitly provided for, any promoter of “specified works” (which should equate to registerable works or activities), who wishes to carry out such an activity in the street, must first obtain a permit from the Permit Authority. The permit allows the promoter to:

- carry out the specified activity;
- at the specified location; and
- between the dates shown and for the duration shown;
- subject to any conditions that may be attached

31. In relation to location, the regulations require schemes to provide for a separate permit for each street. For consistency with NRSWA, a street for these purposes should correspond to a USRN. Permits schemes should also provide that where activities are carried out in more than one phase, e.g. separate interim and permanent reinstatements, each phase should be the subject of a separate permit.

32. Permits will only be valid from the start date to the end date of the permit. The start and end dates should be in calendar days, notwithstanding many aspects of permit schemes will operate in working days. This should ensure that there will be no ambiguity as to whether the permit is valid or not, even at weekends or on Bank Holidays. That will be important for the operation and enforcement of permit schemes given the penalties for working without a permit.

33. Regulation 9(2) allows the exceptions to be defined, so that certain activities can take place without requiring a permit. In order not to prevent activities that are necessary for emergency or urgent reasons, authorities should provide for the initial stage of immediate activities to be exempted from requiring a permit. But promoters will need to apply for a permit within 2 hours (see section on Permit for Immediate Activities in para 36).

34. The definition of “permit” in regulation 2 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 regulation 37(4) makes clear.

35. For consistency, Permit Authorities should design their schemes so that:

- in relation to category 0, 1, 2, and traffic sensitive streets, the planned commencement date and finishing date for the activity are the start date and end dates respectively on the permit. The permit will not be valid before the start date on the permit and will cease to be valid once the end date has passed;
- on category 3 and 4 streets that are not traffic sensitive, permit start and end dates should allow for flexibility in the start of the activity but once the activity is started it must be completed within the activity duration period specified in the permit. The starting window should be 5 working days for major and standard activities and 2 working days for minor activities. This is in line with the validity period within the notice system. Thus the start date on the permit will be the planned start date for the activity but the end date will need to allow for the possibility of the activity starting on the last day of the starting window, noting that the last of the starting window would then be day 1 of the activity duration.

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.

36. Regulation 9(7) provides that the Permit Authority may establish different classes of permit. As previously mentioned it is the intention to encourage the use of similar concepts to the notice system and therefore four classes of permits should apply, reflecting the work categories in the notice system. Permit Authorities should establish the following in their schemes:

Permit for Major Activities

Major activities would be those which:

- 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, require a temporary traffic regulation order (i.e. not a temporary traffic notice) under the Road Traffic Regulation Act 1984 for any other activities; or
- other than immediate activities, have a duration of 11 working days or more.

Major Activity Permits would usually be required for the most significant activities on the highway. It is accordingly envisaged that Permit Authorities will need the most advance notice in relation to such activities, which is why it is expected that Permit Authorities will wish to incorporate the requirement to obtain a provisional advance authorisation (PAA) as part of the application process for a Major Activity Permit (see para 38 below). This should incorporate a minimum of three months advance notice of the proposed activity, to enable appropriate planning for any co-ordination measures. The application for a PAA should include a description of the proposed activity and the proposed start and end dates.

The promoter should be required to provide the final detailed information in support of its application for a permit nearer the time of the proposed start of the activity - at least 10 working days before the activity is due to commence. Such information will need to include the proposed start and end dates for the activity, which may be different from those in the provisional advance authorisation application, and if so, the applicant should be required to justify the change in their application.

Permit for Standard Activities

Standard Activities are those activities, other than immediate or major activities, that have a planned duration of between 4 and 10 working days inclusive. (Activities lasting less than 10 working days will be classified as major activities if they require a temporary traffic regulation order, e.g. to close a street or ban a turn.)

When the promoter of the activity applies for this class of permit it should do so at least 10 working days before the activity is due to commence. Such an application should include a description of the proposed activity and the proposed start and end dates.

Permit for Minor Activities

Minor Activities are those activities, other than immediate or major activities, where the planned working is 3 working days or less.

The promoter of the minor activity should be required to apply for a permit at least 3 working days before the proposed start of the activity. The application should include a description of the proposed activity and the proposed start and end dates.

Permit for Immediate Activities

Immediate Activities comprise:

- Emergency works as defined in section 52 of NRSWA; and
- Activities (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;
 including works that cannot reasonably be severed from such works.

These are the equivalent of “urgent works” as defined in the 2007 Notices Regulations under NRSWA

Promoters of immediate activities should be required to apply for a permit within two hours of the activity starting. As mention above, the permit scheme should provide that activities of this nature may proceed without a permit, given their emergency or urgent nature, but that Permit Authorities should consider making such activities subject to conditions (this is specifically provided for in regulation 13). Permit conditions by definition will be specific to the activity to which the permit relates. On the other hand, conditions which apply to activities which can be carried out without a permit should normally apply automatically to all such activities and such conditions should be generic in nature (although conditions which apply only in relation to specific and codifiable circumstances may still be appropriate). The requirement that the promoter submit an application for a permit within two hours of beginning work should be one such condition. It is intended that such an obligation will ensure that the activities are specifically authorised and made subject to appropriate, specific permit conditions as soon as is practicable.

There may be circumstances when it becomes apparent that specific conditions, going beyond the generic conditions, need to be applied to an immediate activity before a permit is granted. Permit Authorities may wish to design their schemes to allow for such specific conditions to be applied. If they do so they must ensure that arrangements are in place to ensure that any conditions are made known to the promoter in a timely manner and are accessible to other parties in a similar manner to permit conditions.

37. It should be noted that the above four classes of permit are more accurately eight classes, on the basis that each of the four classes separately relate to main roads, i.e. “category 0, 1, 2, and traffic sensitive streets”, and minor roads, i.e. “category 3 and 4 streets which are not traffic sensitive”, respectively. This is reflected in the recommended fee levels below.

Provisional Advance Authorisation

38. Regulation 11 provides that permit schemes may require a provisional advance authorisation to be obtained as part of the application process for certain classes of permits. PAAs are envisaged as a means of enabling significant activities to be identified, coordinated and programmed in advance, by allowing activities to be provisionally “booked in” by the Permit Authority pending the Authority’s subsequent decision on whether, and with what conditions, to issue a permit for the activities. They are in many ways equivalent to advance notices issued under s54 of NRSWA. Permit Authorities should incorporate a requirement for PAAs in their schemes in relation to major permits but not in relation to other permits.

39. Where provisional advance authorisations are used, regulation 30(1) provides that a fee may be charged for the application for a permit, in addition to the fee which is charged for the issue of the permit. This reflects the importance of Permit Authorities ensuring that PAAs are properly considered and issued in the expectation that a permit will ultimately be issued for the activities (though regulation 11(5) makes clear that the issue of a PAA does not guarantee that a permit will be issued). The purpose of the PAA is to allow the promoter to know that he will be able to undertake his proposed activity and provisionally reserve the occupation of the highway. In keeping with this purpose, permit schemes should require an application for a PAA to specify proposed start and end dates for the relevant activities, although the scheme should allow sufficient flexibility to enable the dates to be reasonably adjusted when a permit is ultimately issued.

40. Permit schemes should require that Provisional Advance Authorisations be obtained in relation to major works not less than 3 months in advance of those activities or as agreed. The information required in support of an application for a PAA should be equivalent to, and certainly should not exceed, that required in support of an application for a permit

Conditions

41. Regulation 10 allows for the provision of attaching conditions to permits. The scheme must provide for that and must specify the types of conditions that will be applied. To allow effective monitoring and management of activities to take place, permit schemes should provide that the permit specifies in detail the activity it allows and the conditions attached. Much of the information will be drawn through from the application into the permit and its conditions. As a minimum, any constraints in the original application should be reflected in conditions in the permit. For example, if the activity is to be in a location which is traffic sensitive at some times and the original application stated that the activity was to be outside the traffic sensitive times, then that should be made a condition of the permit.

42. The Permit Authority may also wish to vary the conditions or impose such other conditions on the activities authorised by the permit as it sees fit, having regard to the potential of that activity to cause disruption on its network. If possible, the authority should first talk to the promoter. Depending upon the outcome of discussions, the Permit Authority may then choose to issue the permit which includes conditions that differ from the proposals in the application.

43. Regulation 13 provides for permit schemes to impose conditions on activities which are not the subject of a permit. In practice this means the initial stage of an immediate activity before a permit is issued. This is dealt with in the section above on "Permit for Immediate Activities". Permit Authorities should ensure that in their schemes they are able to link an immediate activity and the conditions attached to it prior to a permit being issued with the application for a permit for that immediate activity when it is made. Without such a link there could be two separate sets of information about one activity, possibly with different conditions, which could compromise effective management of the network.

Variations

44. Regulation 15 provides for permits and the conditions attached to permits to be varied. This is important so that the Permit Authority can actively manage other activities on the network in the light of changing circumstances. Variations can take place at any time after the permit has been issued and before or during the activity itself, but must be done before the permit end date is passed.

45. A provisional advance authorisation cannot be varied. Permit schemes should be designed so that in circumstances where a PAA has been given but a full permit has not yet been issued, and proposals change, the Permit Authority should be informed of the proposed changes and a revised application for PAA or permit made.

46. Under regulation 15(2), the Permit Authority must ensure that the permit scheme sets out clearly how applications for permit variations or variations to permit conditions must be made. Schemes should provide that:

- where the existing permit has more than 20% of its duration or more than two working days to run, whichever is the longer, the promoter shall apply for a variation electronically
- in any other case the promoter shall first telephone the Permit Authority to ascertain whether the Authority is prepared to grant a variation and only apply, again electronically, if the Authority is so prepared.

47. Activities can be particularly subject to change where a promoter has to make several excavations or registerable openings of the street in order to locate a fault. An example would be where gas had migrated along a duct to emerge from the ground some distance from the actual leak. The nature of searches in this sort of situation is that a series of excavations or openings are made from where the symptoms are apparent to trace back to the point where the fault is occurring. In normal circumstances each new excavation would require a permit

variation. The arrangements below aim to avoid a potential excess of permit variations in a short space of time as each successive hole is dug. While wanting to avoid too many permit variations, it is nonetheless important that the permit authority knows what is going on so that they can coordinate and manage these and other works in the area.

48. Permit Authorities should provide that only in these fault-finding circumstances requiring a series of excavations or openings, and where the activities are immediate activities, their schemes should apply the following arrangements. As immediate works, the promoter will submit the first permit application within 2 hours of starting work. That first application will contain the location of the initial excavation or opening:

- (a) For any further excavations on the same street within 50m of the original hole, the promoter will telephone the authority to inform them of the new location but 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 new 50m band away from the original hole in the same street, i.e. 50-100m, 100-150m etc. Standard variation charges can be applied, although the permit authority may opt to waive such charges in its scheme generally or for particular cases. Separate variations would be required for bands going in different directions along the street in question.
- (c) For any further excavations within each band the promoter will have to telephone the authority to inform them of the new location but no permit variation will be needed and no permit charge can apply.
- (d) If at any time the search carries into a different street, or more strictly a new USRN (including if the street changes to a different authority), then a separate permit application must be made for the new street

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

49. It follows from other aspects of permit schemes that conditions for these activities can be varied, e.g. to take account of the fact that the new location, even if within the same 50m band, is in a potentially more disruptive location.

50 One of the features of permit schemes is that they effectively allow road space to be booked by promoters for their activities. Once the permit is issued the promoter should have reasonable confidence that road space will be available for them. Nevertheless, even when a permit has been issued in good faith by the Permit Authority, circumstances beyond the Authority's control may cause the Authority to review the permit and may lead them to conclude that the permit or its conditions need to be changed. Such changes should be the exception and should only happen when the new circumstances could not have been reasonably predicted or where the impact is significant. For example, roads being closed by floods, burst mains, dangerous building, or unexploded bomb and significant traffic disruption has ensued etc which would lead to traffic being diverted onto the road where an activity was underway or about to start but the permit had been issued. If the consequent disruption cannot be mitigated in a better way it may be necessary to vary the permit for the activity e.g. by changing the time or manner of working. Regulation 15(3) provides that the Permit Scheme must include a statement of the Permit Authority's policy as to the circumstances in which it will review, vary or revoke permits on its own initiative.

51. The policy statement should usefully include an explanation of the procedures which will apply when the Permit Authority decides to initiate a change. Advance consultation with the permit holder affected will be appropriate in most cases, and it is desirable that wherever possible changes should be agreed with them. Under regulation 31(2) no fee may be charged for variations initiated by the Permit Authority.

Revocation

52. As with variations to permits, the revocation of a permit can be initiated by either the promoter or the Permit Authority. The permit scheme should set out the process by which a promoter who no longer requires a permit for an activity can request the Authority to revoke or cancel a permit that has already been issued or cancel or withdraw an application that has been submitted but for which a permit has not yet been granted.

53. As with variations, for revocations initiated by the Permit Authority, the Authority must set out its policy as to the circumstances in which it will revoke permits on its own initiative.

Permit Applications

54. The Permit Authority should make it clear to all promoters working in their area, or who may potentially work in their area, the name and contact details of the relevant person or persons who will be dealing with permit applications. It is suggested that this should be done through a dedicated section on their website. It is not suggested that this is set out in the permit scheme, as the permit scheme cannot be readily amended.

55. In line with regulations 9(9), Permit Authorities must ensure that their schemes require promoters applying for permits or provisional advance authorisations to copy their applications to any authority or undertaker that has requested to see notices or permit applications on certain streets. Regulation 37(7) imposes the equivalent requirement (through an amendment to section 93 of NRSWA) ` for copying such an application to the relevant transport authority for activities in the vicinity of a level crossing.

Timing of Applications and Permit Authority Response

56. For effective planning and co-ordination information needs to be provided to the Permit Authority in good time. Permit schemes should provide for the minimum time periods before the proposed start date of an activity by which time the relevant permit application needs to be made. As it is considered that it would be beneficial for standard periods to apply in all permit schemes, it is strongly recommended that the timings set out in the Table below should be adopted. In measuring from the proposed start date, the time period is measured from the time of receipt of the application by the Permit Authority. The EToN system will provide an auditable record of when an application was received.

57. Permit Authorities may also include in their permit schemes a condition that, where Immediate Activities are undertaken on certain designated streets, the undertaker is required to contact the Authority by telephone immediately, notwithstanding the duty to submit a permit application within two hours. It is not intended that all category 0-2 and traffic sensitive streets should be so designated but only those most susceptible to unplanned disruption. It would also be reasonable for this condition to be limited to times when the authority has arrangements in place to respond to such calls. Consideration would need to be given, in particular, to arrangements out of normal working hours. If Permit Authorities include this requirement in their scheme, they will need to indicate the designated streets on the ASD with a marker, together with the contact telephone number.

58. While it is crucial that applications for permits and variations are made in a timely manner, it is equally essential that Permit Authorities are proactive in running a permit scheme. Regulation 16 requires time limits to be set out in a permit scheme committing the Permit Authority to respond to applications within set periods. Again, for reasons of consistency, schemes should use the time periods set out in the Table below. As with timings for applications, the Table refers to times of receipt. A "response" for these purposes means a decision to grant or refuse a permit, but where there are reasons why the permit cannot or should not be granted in the terms applied for (e.g. because of insufficient information or because of a clash with other activities), the response indicating that a permit will not be granted in those terms should explain the reasons to the applicant, which will enable them to make a revised, compliant application.

Table of 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 for responding to applications for permit variations
	Provisional Advance Authorisation	Application		Provisional Advance Authorisation	Application	
Major	3 months	10 days	2 days or 20% of the original duration whichever is the longer	1 calander 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	

“Days” in the above table refer to working days, as defined in NRSWA and the permit regulations.

Permit Application Content

59. It is desirable that there should be a high degree of consistency between permit schemes, and in view of this Permit Authorities should design their permit schemes so as to incorporate the following in relation to permit applications:

USRN

60. Regulation 9(4) provides that a permit may relate only to a single street. In order to enable the permit register to be as detailed as possible, permit schemes should provide that a “street” should relate to a single USRN. Thus where a single street on the ground has more than one USRN, separate permits would have to be issued in respect of each USRN to which an activity relates.

Description of activity

61. Permit schemes should require a sufficiently detailed description of the activities to be provided to allow the street authority to assess the likely impact of the activity. It is anticipated that the level of detail should be no less than that already required under the NRSWA notice system.

Location

62. Permit schemes should require promoters to include an accurate location in their application based on National Grid References (NGRs), 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. That space needs to cover all the area used by the

activity, including for storage of materials, working space, safety zone, provision for pedestrians and traffic management.

Timing and Duration

63. Permit schemes should require each application for a permit to include proposed start and end dates, and should require applicants to indicate whether they wish the permit to cover work at weekends and on Bank Holidays (where applicable). It is also suggested that details of the times of day the activity is to be carried out should also be required, including any proposal to work at night. This would be particularly relevant to Traffic Sensitive Streets.

Illustration

64. Permit schemes should allow the Permit Authority to require the applicant to provide an illustration of the works (including plans, digital photographs etc) in appropriate cases. Activities on streets with Special Engineering Difficulty will in any case require a plan and section. It is particularly important that such an illustration is provided where the works are sufficiently significant in terms of potential disruption due to position and size of the activity. This may be more than just major activities as a small excavation in a critical junction may well be much more disruptive. This should include details of what the works are, whether they are likely to affect more than one lane of the street and if possible a numerical measure of estimated disruption. This last measure should only be required if the promoter has ready access to any information needed to derive such an estimate.

Technique to be used for underground activities

65. Permit schemes should require applicants to supply details of the planned techniques to be used, such as open cut, trench share, minimum dig technique or no dig. It may often be appropriate for the Permit Authority to ensure that the proposed technique is the one used by making it a condition of the permit.

Traffic Management and Traffic Regulation Orders

66. Permit schemes should require applicants to supply details of their traffic management proposals, including 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. It may be desirable to make it particularly clear that TROs have to be applied for in the usual way and to the usual timescales, so that applicants do not get confused into thinking that an application for a permit automatically incorporates an application for TROs required in connection with the works, or that the timescales applicable to permits apply also to the TRO process.

Depth

67. Permit schemes should require that activity promoters provide their best estimate of the excavation depth as part of the application. While this might be expressed as a range, it should nonetheless provide a meaningful indication of the nature and extent of activity involved.

Reinstatement type

68. Permit schemes should require applicants to indicate whether the activity is intended to be completed with interim or permanent reinstatement or a mixture of both. If the latter, then details would need to be provided as to where interim or permanent reinstatements will be completed within that permit.

Inspection units

69. For reasons of consistency, permit schemes should require applications to include 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 in *The Street Works (Inspection Fees) (England) (Amendment) Regulations 2004*.

Contact person

70. Permit schemes should require all applications to include the 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.

Issuing permits

71. The permit scheme should provide that a permit is issued to the promoter for every permit that is granted. The permit should be sent to the promoter electronically through the EToN system. The issued permit should contain all the conditions attached to the permit so that there is no ambiguity about the validity and terms of the permit. The permit must also be placed on the permit register and copied to any undertaker, authority or other relevant body that has asked to be informed about activities on a particular street.

72. Under regulation 12, all permits must be given a unique reference number, so as to provide a quick means of cross-referencing and assist in the compilation of the register. To the same end, the EToN numbering conventions should be followed when determining reference numbers, under which variations to permits are denoted by the use of the same unique reference with a suffix to denote the variation. Permit Authorities should also mark permits in such a way as indicates any cross references to linked permits which have been issued.

73. Permit Authorities should also include provision in their permit schemes imposing standard conditions on permits which will require the permit reference number to be prominently displayed on the site information board for each set of works. This will assist inspections, particularly in relation to the checking of conditions with which promoters are required to comply.

Permit Conditions

74. Permit schemes may make provision for the Permit Authority to attach any or all of the types of conditions in regulation 10(2) to permits. If a Permit Authority is considering including any types of conditions not listed in regulation 10(2) in their scheme, such as conditions specific to a locality, they should discuss this with the Department to see if such conditions are likely to be acceptable.

Fees

75. Permit Authorities must set out their proposed fees in their application to the Secretary of State to run a permit scheme and must set out their justification for those fee levels. The fee levels will be considered by the Secretary of State as part of considering the application to run a scheme and the approved figures included in the permit scheme order.

76. Permit Authorities should be aware that the Secretary of State may need to review fee levels particularly closely in the first years of Permit Schemes. This is with a view to ensuring that the overall income from fees paid by undertakers does not exceed the prescribed costs described in regulation 29 (the costs of operating the permit scheme in relation to undertakers).

Maximum fees

77. Notwithstanding an authority's costs, the regulations set maximum fees that Permit Authorities may charge. These are set out in regulation 30(4), (5) and (6). They cannot be exceeded.

Recommended fees

78. Within the maximum fee caps provided for in the Regulations, permit schemes should not provide for fees higher than those set out in the table below in respect of each class of permit.

	Proposed maximum fee levels per permit or provisional advance authorisation	
	Road category 0 - 2 or Traffic Sensitive Streets*	Road category 3 & 4 non Traffic Sensitive Streets*
Application fee for Major Activity Permit (includes Provisional Advance Authorisation)	£105	£75
Issue of Major Activity Permit	£240	£150
Issue of Standard Activity Permit	£130	£75
Issue of Minor Activity Permit	£65	£45
Issue of Immediate Activity Permit	£60	£40

* Streets are defined as traffic sensitive for this purpose if they are designated as traffic sensitive for any time of the day or year

79. Similarly, in relation to permit variation fees, in addition to the maximum fee established in the Regulations, the following should not exceed

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

80. Permit schemes should make appropriate provision so that where a permit variation would move an activity into higher category, the promoter will be required to pay the difference between the permit fee for the two categories as well as the permit variation fee.

81. These fee levels are intended as maximum fee levels, and it may be appropriate for lower fees to be provided for in permit schemes.

Circumstances when no fees or reduced fees are payable

82. The regulations 31(1), 31(2) and 31(3) prescribe circumstances when no fee can be charged to a promoter. In addition, there may be circumstances where through no action, failing or fault on the part of the promoter, the Permit Authority revokes the promoters permit. This might arise as a result of third party activity. If as a result the promoter had to apply for a new permit, it would be reasonable to pay no fee for the new permit. Permit Authorities should incorporate such a provision in their schemes.

83. Regulations 31(4) deals with situation where discounts must be applied, when one or more promoters are collaborating to reduce the impact of their works. Provided the objective of reducing impact is met, such circumstances could include:

- Where an activity is part of a project that involves working on more than one adjacent streets. Project in this context means a set of works that is of the same order as would take place in a single street but which happens to cover more than one street, e.g. if

repairs on a pipe go round a corner from one street into another. It is not intended to cover whole area wide projects in a single permit

- Where an activity involves more than one promoter collaborating in a single coordinated set of works. Permit Authorities should provide that where highway authority promoters are collaborating with undertakers, those undertakers will be eligible for the discount in regulation 31(5).

84. Regulation 31(5) provides for a uniform discount for all promoters involved in the qualifying circumstances, whoever is the lead promoter. Permit Authorities may design their schemes to allow for greater discounts, for example if they wish to encourage particular behaviours.

85. If a Permit Authority wished to set out circumstances in which it would always waive or reduce fees it can set this out in the permit scheme, as long as the circumstances can be clearly codified. It should be understood that the Authority would be bound by this commitment. Even if such a provision was in their scheme, a Permit Authority may also wish to include provision enabling it to waive or reduce fees in other circumstances as well.

Use of fee income

86. Regulation 32 stipulates that fee income must be applied towards the costs of operating the permit scheme which are prescribed costs – i.e. the costs of the scheme which are attributable to the activities of statutory undertakers. In the event that there is a surplus in a given year, the money should be applied towards the costs of the scheme in the next year and the fee levels adjusted accordingly. A sustained surplus would indicate that the income was regularly exceeding the prescribed costs and that the fee levels should be adjusted, which the Secretary of State may do using his powers under s36 of TMA.

Sanctions

87. The Regulations provide Permit Authorities with a number of sanctions which they may use to achieve compliance with permit schemes. Permit Authorities should prepare a policy statement to indicate how it proposes to employ the sanctions.

88. Regulation 18(1) enables Permit Authorities to issue notices in respect of non-compliance, and to propose remedial action which must be undertaken within the timeframe set in the notice.

89. Regulation 18(3) builds on these notices, and provides that where an undertaker has not taken the remedial action within the timeframe, the Permit Authority may take such steps as it considers appropriate having regard to the original non-compliance, at the cost of the undertaker.

90 Regulation 19 provides that it is a criminal offence for an undertaker or someone acting on its behalf to undertake works without a permit. The offence carries a maximum fine of level 5 on the standard scale (currently £5000). Regulation 20 provides that it is a criminal offence for an undertaker or someone acting on its behalf to undertake works in breach of a condition. This offence carries a maximum fine of level 4 on the standard scale (currently £2500).

91. Regulations 21 to 28 (and Schedules 1 and 2) authorize Permit Authorities to issue Fixed Penalty Notices in respect of the criminal offences. Fixed Penalty Notices offer the offender an opportunity to discharge liability for an offence by paying a penalty amount. The penalty amount is £500 for working without a permit, but a discounted amount of £300 is available if payment is made within 29 days. For working in breach of a condition the penalty is £120 and the discounted amount £80, the same as for Fixed Penalty Notices under the notices system.

92. In circumstances where a Fixed Penalty Notice has been issued in relation to an offence, but the Permit Authority forms the view that it would be more appropriate to prosecute the offender, the Authority must withdraw the Notice under regulation 27 before bringing the

proceedings. Once the Fixed Penalty Notice has been paid, however, no prosecution can be brought.

Modifications of NRSWA provisions

93. Part 8 of the Regulations provides for the disapplication of certain sections of NRSWA which govern the notices system, on the basis that applications for permits serve the same purpose of providing information to the Permit Authority. Part 8 also provides for the modification of other sections of NRSWA, principally to replace references to the disapplied sections with references appropriate to permit schemes.

94. Some changes to the provisions in NRSWA and its regulations affect both undertakers' and highway authorities' activities but others do not. In particular the changes to section 58 (restrictions on works following substantial road works) and section 74 (charge for occupation of the highway where works unreasonably prolonged) apply only to undertakers' activities. Permit schemes should make arrangements so that similar procedures are followed for highway activities in relation to timing and duration, in order to facilitate the operation of the permit scheme and, as far as possible, parity of treatment for all promoters.

95. For consistency between schemes, all of the Part 8 disapplications and modifications should apply to all streets to which permit schemes apply. If a Permit Authority would prefer that one or more should **not** apply, this should be discussed with the Department.

Glossary

Terms used definitions.

<i>ASD:</i>	Associated Street Data
<i>EToN</i>	Electronic Transfer of Notices
<i>GIS</i>	Geographic Information System
<i>Main Roads</i>	All streets in road categories type 0, type 1 and type 2, and any other streets designated as traffic sensitive at any time
<i>Minor Roads</i>	All streets in road categories type 3 and type 4 that are non designated as traffic sensitive at any time
<i>NGR</i>	National Grid Reference
<i>Notice System</i>	System whereby statutory undertakers give advance notice of street works to street authorities - NRSWA s54, s55 and s57.
<i>NRSWA</i>	New Roads and Street Works Act 1991
<i>Registerable Activities:</i>	Activity in the context of permits refers to: street works as defined in s48 (3) of the New Roads and Street Works Act 1991 (NRSWA); works for road purposes as defined by s86 (2) of NRSWA; other works that occupy the highway carried out by the authority in its capacity as a highway authority or traffic authority. It corresponds to the "registerable works" under the Notice System which excludes certain de minimus street works and equivalent highway and traffic works.
<i>Road Categories:</i> <ul style="list-style-type: none">• <i>Type 0</i>• <i>Type 1</i>• <i>Type 2</i>• <i>Type 3</i>• <i>Type 4</i>	<ul style="list-style-type: none">• roads carrying over 30 to 125 msa*• 10 to 30 msa• 2.5 to 10 msa• 0.5 to 2.5 msa• up to 0.5 msa (*millions of standard axles)

<i>TMA</i>	Traffic Management Act 2004
<i>Traffic Sensitive streets</i>	<p>Under section 64 of NRSWA a street authority may designate certain streets (or parts of streets) as "traffic-sensitive".</p> <p>The purpose of this designation is to flag that works proposed in these situations are likely to be particularly disruptive to other road users, but this does not necessarily prevent occupation during traffic-sensitive times.</p>
<i>USRN</i>	Unique Street Reference Number
<i>Activity Categories:</i> <i>Major Activities:</i> <i>Standard Activities:</i> <i>Minor Activities:</i> <i>Immediate Activities:</i> <ul style="list-style-type: none"> • <i>Emergency works</i> • <i>Urgent Works</i> 	<p>Please refer to paragraph 36.</p> <p>Please refer to paragraph 36.</p> <p>Please refer to paragraph 36.</p> <p>fall into two categories: Emergency and Urgent.</p> <p>Please refer to paragraph 36.</p> <p>Please refer to paragraph 36.</p>