



JAG (UK) GUIDANCE DOCUMENT

2/2013

FPNs

Good Practice Advice Note

FIXED PENALTY NOTICES





This advice note was developed in consultation with London Permit Scheme (LoPS) Permit Authorities and London Highway Authorities through their borough representation.

Acknowledgements

The extract from the Department for Transport Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters, included in Annex E, and the extract from the Department for Transport Code of Practice for Permits, included in Annex F, have both been used with permission.

Reference has also been made to the Street Works (Fixed Penalty) (England) Regulations 2007 and the Traffic Management Permit Scheme (England) Regulations 2007 in compilation of this advice note.

Further Advice

Please address any queries or requests for further advice on this document to the following and we will respond to you:

Manager@jaguk.org

Please note that it is not possible to give advice on what may or may not constitute an offence

Any general queries should be addressed to JAG(UK).

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IMPORTANT

In matters relating to Fixed Penalty Notices (FPNs) and this advice note, it is important that independent legal advice is sought.

1 Advice Note Status

1.1 The advice contained in this note refers to England and Wales only.

1.2 This is a generic advice note endorsed and managed by JAG(UK) to which street authorities and works promoters may wish to refer within their own individual policies and strategies. It applies only to England and Wales as Scotland and Northern Ireland have their own legislation. It should be noted that throughout this document, any reference to 'works promoters' is inclusive of all utilities, s50 licence holders and highway authorities. Indeed anyone who works or intends to work on the highway network.

1.3 The current Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters which includes DfT guidance for FPNs, (hereinafter known as the Code), the Street Works (Fixed Penalty) (England) Regulations 2007, the provisions of the New Roads and Street Works Act 1991 (NRSWA) as amended by Traffic Management Act 2004 (TMA), the Code of Practice for Permits (hereinafter known as the CoP Permits) and the Traffic Management Permit Scheme (England) Regulations 2007 were all used as reference material for the development of this document. Any future changes to the enabling legislation will result

in a need to revise this guidance note.

1.4 The advice offered in this document is discretionary. Street authorities are, therefore, recommended to consult their own legal advisers when considering applying this guidance or drafting their organisational policies, strategies and procedures.

2 Strategic Goals

2.1 The main strategic goal is the provision of accurate and timely data required to facilitate the co-ordination of works. A street authority must have confidence in all notification information sent and received, to assist in achieving that authority's Network Management Duty (NMD).

3 Scope and Purpose

3.1 The scope of this guidance note is limited to explaining a number of principles that should be considered in the application of the Fixed Penalty Notices scheme. The scope does not include a definitive definition of what constitutes an FPN, as The Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters ('The Code') advises that it is not possible to state what constitutes an offence as that is a matter for the Courts. This also applies to permitting. Future revisions of this guidance note may be able

to incorporate any such decisions and give further relevant advice.

3.2 It must be noted that there can be no prescriptive process applied to the FPN scheme and a street authority must determine its actions on a case-by-case basis. The fact that an authority has reached a decision with regard to an offence under particular circumstances does not imply that the authority will always reach that same decision. An authority should adopt a consistent approach to all works promoters in applying the DfT guidance, which advises that an FPN should be given where it has the most benefit. It must, therefore, be accepted that street authorities will not always follow the same course of action upon the discovery of similar offences. However, it is important that all works promoters understand that the authority will use all the powers available to them as appropriate.

3.3 This is a generic advice note for which the principal aim is to offer guidance to street authorities to assist them in generating improvement in both the data accuracy and the timeliness of notifications and registrations received from works promoters for works under the New Roads and Street Works Act 1991 (the 1991 Act) and the Traffic Management Act 2004 (the 2004 Act) and associated Codes of Practice. These improvements may be achieved through a variety of means including:-

- Advice
- Working together including partnerships
- Application of the FPN scheme
- Prosecution of offences.

3.4 This advice note outlines the process for the identification of permitting and notice offences, and the tools for driving improvement within promoting organisations, and monitoring progress. It also highlights some of the associated risks and dependencies. It is recommended that street authorities establish detailed procedures for using FPNs which encompass the information in this advice note. Please also refer to section 5.1.

3.5 For the avoidance of doubt, a street works licensee (under Section 50 of the 1991 Act) is an undertaker and a works promoter to which the FPN Regulations only, apply.

3.6 This advice note is concerned with both the high level approach and general guidance which is detailed in Annexes A and B.

3.7 Managers of the FPN scheme should read this document in conjunction with chapter 11 of the Code, and chapters 17 and 18 of the CoP Permits.

3.8 JAG(UK) believes that the objectives of this advice note will be best met if street authorities and utility companies work together to seek best practice for

achieving compliance with the legislation. Good communication, co-operation and co-ordination by all parties are paramount.

- 3.9 It is vital to the success of the FPN scheme that all works promoters are treated in an equitable manner involving reasonableness and fairness. The Code and CoP Permits emphasise the importance of the notification of works by all works promoters to be to the same accuracy and timescales. Compliance by street authorities with the statutory Network Management Duty relies to a large extent on the requirement and ability to co-ordinate works through the reliance on accuracy and timely notification from all works promoters.

4 Benefits

- 4.1 There are a number of identified benefits that the operation of these guidelines may produce which include:-
- Provision of accurate and timely notification data
 - Increase in confidence of notification data
 - Increase in confidence within the street authority to co-ordinate works based upon this data
 - Improved performance in street works activities
 - A contribution to minimising disruption arising from street and road works

- Improved working relationships
- Standard reporting of data quality for all works promoters.
- Accuracy recording of data in defence of liability claims

- 4.2 JAG(UK) encourages the principle of only giving an FPN where there will be a benefit, however, it will be for individual street authorities to decide if such an approach has had the desired effect of driving measurably better behaviour from the works promoter. A street authority should consider the individual circumstances of the offence. However, other elements may be taken into account such as the previous behaviour of the works promoter in relation to notification performance, but again, authorities should act reasonably in such circumstances. To avoid unnecessary disputes, FPNs, regardless of whether they are system generated or not, should not merely be forwarded to the works promoter, but should be scrutinised and, if appropriate, discussed with the works promoter before any decision to give an FPN is taken.

5 Risks and Dependencies

- 5.1 The success of the recommended approach is highly dependent on the commitment of a street authority to pursue the objective of data quality improvement through escalating levels of enforcement (including

prosecutions). Street authorities that, for whatever reason, fail to use all the powers available to them may continue to suffer from poor quality notifications, which may in turn compromise the authority in fully delivering its Network Management Duty.

- 5.2 Within this advice note, the role of a Local Street Works Register (LSWR) operational / co-ordination team is seen as driving the identification of deficient notification data and untimely submissions, and, where necessary, carrying out the enforcement process with assistance of a legal services team. It is accepted that different authorities may choose to operate the scheme differently, and it is not the intention of this note to direct authorities in such matters.
- 5.3 These guidelines focus on the approach of the authority. The attitude of works promoters, combined with enforcement sanctions, will contribute to positively influence data accuracy and timeliness.
- 5.4 A situation could arise when an original offence is taken to court after an FPN remains unpaid. The application of the court process in this way should result in identifying types of failures, which become established as offences, and help avoid a continuous stream of similar cases to the magistrates' court. It is, therefore, important to establish and demonstrate an

FPN process that adopts a reasonable approach.

- 5.5 The success of these guidelines is dependent upon:-

- The adoption of a reasonable approach to enforcement
- The policy of a street authority to positively pursue data quality improvement
- Appropriate identification of data accuracy and notice delivery
- Good internal communication between teams representing the LSWR operations, financial services and legal services, to enable enforcement (including prosecutions) to be progressed
- Good external communications between the street authority and works promoters
- The robustness of primary legislation, associated regulations and Codes of Practice
- Robust management systems which are compliant with user requirements.

6 Fixed Penalty Notice Provisions

- 6.1 Schedule 2 of the TMA identifies the notification offences under the 1991 Act to which the FPN scheme applies. The Traffic Management Permit Scheme (England) Regulations 2007, Part 5, identifies the permitting offences to which the FPN

scheme applies. These offences are not decriminalised and an FPN only offers a statutory undertaker the opportunity of discharging any liability to conviction for a fixed penalty offence by payment of a penalty.

period of 29 days or £120 if paid within 36 days.

6.2 The Regulations and DfT guidance state that an FPN may not be given more than 91 days after commission of the offence; however, a street authority has 6 months to take proceedings to a Magistrate's Court from the date of commission of the original offence.

6.3 For notification offences created under the 1991 Act, a Fixed Penalty is £80 if paid within the discount period of 29 days (this can only be extended to the next working day if the 29th day falls on a non working day) or £120 if paid within 36 days (this may be extended at the discretion of the street authority).

6.4 For permitting offences created under 2007 Regulations, the Fixed Penalties are two-tiered:-

- For the offence of Working Without a Permit the Fixed Penalty is £300 if paid within the discount period of 29 days or £500 if paid within 36 days.
- For the offence of Working in Breach of a Permit Condition the Fixed Penalty is £80 if paid within the discount

6.5 The FPN must be given in writing in the prescribed manner and may be given electronically (via EToN, email or fax), through the post or by hand delivery. The works promoter may choose how to receive an FPN and must state to where the FPN should be sent.

6.6 Payment methods must be mutually agreed and may be electronic if the street authority has that method available.

6.7 There is no time limit on representation even after the penalty has been paid.

6.8 The FPN can be withdrawn if in the opinion of the street authority that it ought not to have been given. In such circumstances where payment has been received, it should be refunded.

6.9 A street authority is required to keep accounts and as such may therefore deduct reasonable costs of operating the FPN scheme. Any net proceeds can then be applied for the purpose of developing or implementing policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within the authority's network area.

6.10 Further details can be found in Annexes E and F and also the following documents:-

- The Codes
- The Street Works (Fixed Penalty) (England) Regulations 2007
- The Traffic Management Permit Scheme (England) Regulations 2007

submission and a means for the internal works promoter to correct this data. All street authorities are strongly encouraged to monitor equally the accuracy and timeliness of all works notifications and share the information with works promoters as appropriate.

7 Overview

- 7.1 The primary objective of this advice note is to improve the accuracy and timeliness of notification information submitted to a street authority by all works promoters.

Other aims include establishing a reasonable basis for operating an FPN scheme, assistance in reducing the risk of challenge and accusation of bias to the street authority and ultimately to reduce the need for intervention by the street authority.

- 7.2 Although a street authority cannot give FPNs for works for road purposes, it must equally consider the standards of its own authority works notifications in the same light as that of the statutory undertaker. The notification of works by the local authority to the same standards as other works promoters is seen as a key element in meeting the Network Management Duty. In this way, effective coordination can take place based on accurate and timely information for all works. The street authority should have a system in place to identify failures in its own data

- 7.3 To assist in achieving a street authority's strategic goals, including those of the NMD, improvement in notification data is essential. In order to co-ordinate works on its network, the street authority must have confidence in the notification data it receives, so that in turn it can have confidence in its decisions to facilitate the expeditious movement of traffic upon its network. Although grid references are not a mandatory field in all notifications, works promoters are encouraged to include them, and the street authority should consider this when considering giving an FPN. Such a decision may result in the omission of grid references which will ultimately be detrimental to working together to effect improvement and change.

- 7.4 It is important to note that improvement in data quality is not simply related to co-ordination and the NMD. The notification data within the LSWR is often used in third party liability cases to establish whether works took place at a particular location and the dates the sites were occupied. It is, therefore, essential to the works

promoter, the street authority and, indeed, any claimant that this information is correct and represents an accurate picture of the works.

- 7.5 An objective of the street authority is to improve data accuracy and timeliness through the co-operation of the works promoters and application of the FPN scheme. It is also important that where further enforcement actions arising from failure to comply with the regulations are required, then these are effectively pursued.
- 7.6 The 1991 Act requires a street authority to act in a reasonable manner when carrying out its duties and obligations. This test of reasonableness is also applicable to the operation of the FPN scheme. The Codes state that FPNs should be given 'where they have the most benefit'. The determination of where the most benefit is to be gained is at the discretion of the street authority. Consideration needs to be given not only for particular locations and notification types but also for consistent failure to improve quality and timeliness of notifications despite encouragement to improve. JAG(UK) supports the DfT view that FPNs should be given in circumstances which support the principle of 'where they have the most benefit'.
- 7.7 This advice note recommends that street authorities take on an incremental approach to the FPN

scheme. This approach is to support the street authority in adopting a reasonable and common methodology for managing the FPN scheme which may include initially encouraging the works promoter to resolve issues through co-operation before the full use of enforcement is brought into effect. However, where a street authority considers that the giving of an FPN will not derive the necessary benefit, or where the street authority considers the offence to be of such a serious nature, they still have the option to take proceedings direct to the magistrates' court for the original offence. Please note that in accordance with section 127 of the Magistrates Court Act 1980, any prosecution must be commenced within six months of commission of that offence.

- 7.8 Where a street authority considers an offence, as set out in Schedule 2 of the amended 1991 Act, or the Traffic Management Permit Scheme (England) Regulations 2007, Part 5, has occurred in relation to a works promoter's activities, they may choose to take one of the following courses of action for each offence:-
- Log the offence, inform the works promoter of failure, and follow the error correction guidance set out in 8.3.16 of the Code or 10.16 of the CoP Permits.

- Give an FPN and follow the error correction guidance set out in 8.3.16 of the Code or 10.16 of the CoP Permits.
 - Commence proceedings to prosecute the works promoter for the original offence, and follow the error correction guidance set out in 8.3.16 of the Code or 10.16 of the CoP Permits.
- 7.9 As the main aim is to improve data accuracy and timeliness, the street authority would expect the works promoter to take action to resolve any underlying problems that generate notification failures. This action could take the form of improved training for the works promoters' staff or upgrades to their notice management system where appropriate.
- 7.10 Importantly, the street authority would expect the works promoter to take action to rectify any failures highlighted to them with the submission of the corrected data and use of notification correction procedures.
- 7.11 The recommendation is that a balanced approach is adopted and the street authority should endeavour to:-
- Identify any failure in notifications and draw the works promoter's attention to the failure, allowing the promoter an opportunity to address these failings.
 - Apply the FPN scheme to works promoters to further drive improvement of data quality.
 - Consider taking the appropriate prosecution for the original offence where the first two points above are considered ineffective or the FPN remains unpaid.
- 7.12 However, it must be emphasised that a street authority may need to adopt any one, or a combination of these approaches, as appropriate, when applying their own procedures.
- 7.13 The provision of accurate notification data is a key element in fulfilling the aims of the TMA. In order to fulfil this objective it is essential that a works promoter uses all options at its disposal to ensure the correct data is submitted at the correct time (including the submission of any non-statutory correction notifications where appropriate). This practice should apply in all cases, regardless of whether an FPN or prosecution has, or has not been initiated.
- 7.14 It is strongly recommended that before giving an FPN, a street authority fully considers all possible outcomes including the potential need for prosecution for the original offence, should the FPN remain unpaid. This initial deliberation and subsequent legal action is essential to ensure that the FPN regulations do not fall into disrepute.

7.15 It is very important that an FPN form is completed correctly and succinctly. Every field should be completed accurately to allow for a clear understanding of why an FPN has been given, and for an informed decision to be taken with regard to either representation or payment. Both the offence code and further details of the offence need to be provided accurately so that the recipient can gain a clear understanding of the alleged offence as well as considering if trends are emerging. This will enhance the possibility of the appropriate steps being taken to eradicate system or operational errors.

7.16 A prosecution for the original offence may be taken by a street authority when:-

- a) The original offence is committed and the street authority decides that an FPN is not appropriate, or
- b) The FPN has not been paid at the discounted amount within 29 days or the full amount within 36 days

7.17 At the end of 36th day, (unless extended at the discretion of the street authority), if the FPN remains unpaid, the opportunity for the statutory undertaker to discharge his liability to prosecution has lapsed. The street authority may then commence legal proceedings for the original offence.

7.18 It is recommended that street authorities regularly monitor, produce and publish reports for all works promoters on notification accuracy and timeliness.

8 Representations

8.1 The Code provides arrangements for an undertaker to make representations if they believe that the FPN should not have been given (see also section 9 for delegated powers). An FPN must be given to a works promoter and as such any representations must be made by the works promoter and not their contractor unless the Statutory Undertaker has designated an appointed agent. The street authority needs to specify on the FPN an officer, individual or department who is authorised to deal with formal written representations.

However, before making an official representation, the undertaker is encouraged to try to resolve the issue informally by contacting the officer who gave the FPN. If this fails then the statutory undertaker is required to make a formal written representation to the officer, individual or department, specified on the FPN as being responsible for considering representations, if they so choose. It is considered good practice for a street authority to advise the statutory undertaker of the period within which they

can expect a response to a formal written representation.

- 8.2 Street authorities should be aware that there is no time limit on representations from the works promoter, even after an FPN has been paid. There is therefore a potential for works promoters to make representations after payment. Street authorities should give consideration as to how they can most effectively manage this process should it arise. There is also a possibility that a representation is made during the discount period with a request that if the representation fails, then the discount amount will still be applied. Street authorities should note that the 29-day discount period cannot be extended except where it falls on a non working day, in which case it can be extended to the next working day only.

- 8.3 There are three likely outcomes from representations:-

- a) If the street authority considers that an offence has not been committed (based on additional evidence provided by the works promoter) or an FPN ought not to have been given, the street authority may give a notice withdrawing the FPN.
- b) If, however, the street authority considers that an error was made on the FPN, they should not withdraw it, but leave it to 'lapse' by

allowing the full penalty payment period to pass (36 days) unless agreement is reached between the two parties to withdraw the FPN rather than wait for it to lapse. This should be recorded. The street authority may then consider giving another FPN with the corrected information, provided it can still be given within the regulatory timescale of 91 days. It is good practice to advise the works promoter accordingly.

- c) The street authority still considers the FPN to be legitimate and the penalty remains to be paid.

- 8.4 A street authority should have arrangements in place to refund any payments accepted where that representation has been successful. The street authority should use their best endeavours to ensure that refunds are processed without undue delay.

9 Delegated Powers

- 9.1 Both the Code and the CoP Permits specify that a street authority may enable an agent to deal with FPNs on their behalf pursuant to Schedule 4B of the 1991 Act. This provides that an authorised officer of an authority may give an FPN and that in the FPN, the person named, to whom payment should be made, may be the street authority or person authorised to act on their behalf. However, careful consideration may need to be given on the

extent of provisions of contracting out with regard to any separation of the highway responsibilities for co-ordination of works and sanctions operable through enforcement of notice offences, including giving of an FPN.

- 9.2 The street authority must give an FPN through its authorised officer, who should be responsible for ensuring that the approach and procedures are adhered to, in order to facilitate the improvement of notification data quality. Even when contracted out, the street authority remains responsible for ensuring that the powers under section 95A of the 1991 Act are used correctly and responsibly. Even when duties relating to FPNs are contracted out by the street authority, they should still retain an officer of the appropriate seniority to take any necessary decisions regarding representations or prosecutions.

10 Guidance Framework

- 10.1 This advice note should not be seen as restrictive in terms of dealing with offences and is simply guidance as to a course of action. The main objective is to improve data accuracy and timeliness, which should be considered as a primary factor in deciding any course of action.
- 10.2 A street authority may pursue one of the following three options upon discovery of a noticing offence:-
- Advice / Warning
 - Giving an FPN
 - Prosecution of offences.
- Advice**
- 10.3 The street authority may choose not to give an FPN, but record the failure to comply and request the works promoter to resolve the problem in terms of correcting the notification failure.
- 10.4 This advice may be offered in a number of ways including, but not limited to:-
- A telephone call to the works promoter
 - Follow the error correction guidance set out in 8.3.16 of the Code or 10.16 of the CoP Permits.
 - Feedback to the works promoter via formal letter and/or reports
 - Focussed meetings between the street authority and the works promoter
 - Information provided at coordination forums.
- 10.5 It is strongly recommended that a street authority documents the advice given in any of these forms, as this will provide essential information to pursue further enforcement actions where appropriate and will demonstrate reasonable behaviour.
- 10.6 When requesting a non-statutory correction notice, a street authority should refer to the

guidance set out in 8.3.16 of the Code or 10.16 of the CoP Permits. It is important that all notification errors are corrected at each stage.

This approach is to ensure that the LSWR is an accurate database of the works promoters' activities on the public highway. This is a duty placed on a street authority under s53 of the 1991 Act. It also upholds the reasonable approach promoted by this advice note.

- 10.7 Individual street authorities will need to determine at what point the offer of advice no longer derives a benefit (eg. where a works promoter has perhaps been offered advice on a number of occasions as to the accuracy and timeliness of their data and for which improvements have not been seen).

Giving an FPN

- 10.8 A street authority will need to determine, on a case-by-case basis, when it is appropriate to give an FPN. The Codes recommend that they should be given where they have the most benefit.

- 10.9 Notification failures will lead to a lack of confidence in the data quality. This will impair the ability of a street authority to make informed decisions for purposes of co-ordination, and in turn, their ability to carry out the NMD. The giving of an FPN may be appropriate to provide greater

levels of confidence in the notification data, and should be seen as a means to drive improvement in the submission of this data by the works promoter.

- 10.10 A street authority should always consider the possible risks associated with the giving of an FPN because the decision to give it could be challenged by a works promoter in subsequent court cases. However, a street authority should adopt its own clearly documented approach to enforcement, which should help to mitigate such risks.

- 10.11 This note advises that an FPN may be given where:-

- Offers of advice by the authority have failed to improve levels of notification data accuracy and timeliness
- An offence is believed to have been committed and the authority, after consideration of all relevant information, believes the giving of an FPN will derive benefit.

- 10.12 Street authorities are encouraged to consider all relevant issues pertaining to a specific offence when contemplating the application of the FPN process. The effect of poor notification on an authority's ability to manage network capability, co-ordinate works and fulfil its Network Management Duty, may form part of the process when considering the most appropriate approach when an offence has

been committed. However, it should be appreciated that no restrictive conditions can be applied to the decision making process.

- 10.13 When giving an FPN, a street authority should consider the facts of each individual case before reaching any conclusion. It is not possible to illustrate every potential scenario in this document when it would be appropriate to give an FPN. However, the principles of deriving benefit and acting in a reasonable manner must always be primary considerations. Further details of this can be found in Annex A and Annex B.
- 10.14 It is important to note that when giving an FPN, the same process should be applied as if taking a prosecution; this includes the collection and documentation of evidence. Ultimately, the giving of an FPN may lead to a prosecution for the original offence where the FPN has not been paid. It is of extreme importance that a street authority considers the implications before giving an FPN. Should it remain unpaid, then the street authority should always take the appropriate legal action for the original offence. If they do not, they will compromise the effect of the whole FPN scheme and will not generate the necessary improvements in data accuracy and timeliness. Works promoters will quickly become aware that any threat of legal action is an

empty one and as a result they may not strive to make the appropriate improvements to their performance.

- 10.15 It is important that all works promoters are treated in the same reasonable manner with notification compliance measured consistently. The statutory instrument titled '*The Intervention Criteria (Traffic Management (Guidance on Intervention Criteria) (England) Order 2007 No. 339*)' states at paragraph 41: 'Do the authority apply the same standards and approaches to their own activities as they do to those of others and do they provide evidence of this, particularly in relation to utilities' works and developers' works?' This philosophy is further supported by the work of the DfT Performance Management Working Group. Authorities are encouraged to share information on notification compliance at the regular meetings of national/regional HAUCs.
- 10.16 JAG(UK) supports the principle that the focus for street authorities when applying the FPN scheme, and the works promoters when notifying and undertaking their works, should relate to the required notification compliance. Communication is the key to better quality. Working together, having a mutual understanding and respect of each other's views, and demonstrating a commitment to making the necessary changes within a

reasonable timescale, will generate improvements to the benefit of all parties and road users.

- 10.17 Whilst it is not possible to give an FPN to an authority works promoter, a street authority is strongly encouraged to monitor the accuracy and timeliness of all notifications and follow the procedures within this guidance as far as possible for all works. Analysis, recording and improvement monitoring of internal works notifications will help to demonstrate a consistent and fair approach to all works promoters for the benefit of the whole network and its users. The street authority could also consider the implementation of 'shadow' FPNs, or other contractual arrangements, for internal errors should they believe this to be the most appropriate method of monitoring and effecting a positive change.

It may also be that authorities will use such information as a local performance indicator.

Prosecution of Offences

- 10.18 Prosecutions under the 1991 Act have been available to a street authority since the introduction of that Act. Many street authorities have found taking a prosecution for notification offences difficult in terms of the time and resource required. The legislation and regulations have now been re-drafted in

recognition that the use of an FPN scheme may be a more effective mechanism for some notification offences, whilst still retaining the option of prosecution.

- 10.19 A street authority may take a prosecution against an undertaker in connection with offences under the 1991 Act, which includes the seven noticing offences as set out in Schedule 4A of the 1991 Act within the FPN scheme. These are level 4 offences under the following sections:-

- s54 (5) Advance Notice
- s55 (5) Starting Date
- s55 (9) Cancellation
- s57 (4) Immediate - Emergency
- s70 (6) Reinstatement completion
- s74 (7b) Actual Start/Revised Duration/Works Clear/Works Closed
- 74A (11) Actual Start/Revised Duration/Works Clear/Works Closed.

Further details are included in Annex A.

- 10.20 A street authority may also take a prosecution against an undertaker in connection with the 2 offences created under the Traffic Management Permit Scheme (England) Regulations 2007 within the FPN scheme. These are level 4 and level 5 offences:-

- Reg. 19 (2) Working Without a Permit (Level 5)
- Reg. 20 (2) Breach Of Permit Conditions (Level 4)

Further details are included in Annex B.

10.21 The following matters need to be considered when taking a prosecution for an offence:-

- Decision to prosecute may be taken where a street authority believes an offence has been committed.
- Where an FPN has been given, a prosecution can be started only after the period for payment of the penalty has expired and the undertaker has failed to pay. It must be clear that the FPN has not been withdrawn before taking proceedings.
- Prosecution is not possible where the appropriate penalty payment has been made within the correct timescales or has been accepted by the street authority. Any discounted payment received after the expiry of the discount period should be fully refunded, as soon as practical and the promoter notified. The street authority should then expect the full payment within that timescale.
- Proceedings must be commenced within the statutory time period (six months from commission of the offence) in accordance

with section 127 of the Magistrate's Court Act 1980.

- Should the street authority decide to commence legal proceedings when the FPN remains unpaid, they must ensure that any subsequent attempt to pay the FPN is rejected, otherwise the proceedings will fail. Further advice is detailed in section 11 (Payments, Costs and Proceeds).

10.22 The FPN scheme was established as a means to improve notification data accuracy and timeliness, without recourse to court procedures. This advice note recommends that the FPN scheme be considered before taking proceedings. This does not, however, remove the choice of prosecution as the first option where a street authority considers the original offence to be of such a serious nature or where the FPN scheme has been shown to have failed in previous situations.

10.23 Whilst prosecution may not be the first option undertaken by a street authority, a street authority should consider the benefits that prosecutions may derive to sustain improvement of notification information.

10.24 When taking a decision to prosecute, a street authority must bear in mind that the expectation will be that a fair and reasonable approach, including (where necessary) the use of FPNs has been pursued. It is

recommended that any LSWR operational team should consult fully with their organisation's legal department prior to taking any legal action.

10.25 In cases where an incremental approach has been adopted, it may be necessary to demonstrate this to the court when taking legal action, including the provision of details relating to previous non-compliance and how such situations were dealt with by the street authority.

10.26 Prosecution timeframe.

Assuming the six month period for prosecution of an offence in the Magistrate's Court equates to 182 calendar days from commission, the following table shows two possible examples for giving an FPN and the subsequent time available to commence legal proceedings.

- * If day 29 falls on a non-working day, this period can be extended to the next working day only.
- ** This period can be extended at the discretion of the street authority.

Note: An FPN given after 4.30pm is deemed to have been given on the next working day.

FPN given on first available day after offence committed	Period	FPN given on last available day after offence committed
Day 1	Day FPN given from Commission of Offence	Day 91
Day 29*	End of Discount Period	Day 120 (91 + 29)
Day 36**	End of Full Period	Day 127 (91 + 36)
146 days (182 – 36)	Maximum period remaining to commence legal action	55 days (182 – 127)

11 Payment, Costs and Proceeds

11.1 The FPN scheme needs to be operated on the principle of changing behaviour and improving notification by works promoters to allow street authorities to co-ordinate works and comply with their statutory Network Management Duty. The approach contained within this advice note may then help in the delivery of notification compliance. It is imperative that revenue targets are not set as this may bring the whole scheme into disrepute.

11.2 An FPN is **not** an invoice and therefore does not generate a debt. It is simply an offer to a promoter to discharge its liability to conviction for a fixed penalty offence by payment of a penalty. The undertaker is under no

obligation to pay the penalty and, since no invoice is raised, any non-payment cannot be pursued as a bad debt via the Authority's debt recovery process. Should the FPN remain unpaid, the correct course of action for a street authority is to pursue the works promoter in the Magistrate's Court for the original offence.

11.3 It is essential that a street authority liaise with their finance department to have adequate systems in place to monitor and manage FPN payments outside the traditional invoicing systems common to a local authority. Systems should include the reconciliation of multiple BACS payments with the individual FPNs and at what rate they have been paid. This will allow a street authority to be aware of any possible discount payments made outside the discount period and manage any shortfall accordingly.

11.4 All possible methods of payment are detailed in section 11.5.2 of the Code and section 18.4.2 of the CoP Permits. A street authority's finance department should be capable of processing any payments made by at least two of the five methods listed in the codes. Failure by an undertaker to make payment for an FPN should result in the street authority prosecuting for the original offence.

11.5 The following is suggested to try and ensure consistency regarding

the date on which a payment was made:-

- BACS – the date the funds were received into the street authority bank account.
- Cheque – the date on the post mark on the envelope in which the cheque was received by the street authority.
- Credit Card – the date the payment was taken by the street authority.

*Please note that for payments received, dates are referred to by standard calendar hours and not NRSWA hours.

11.6 Arrangements need to be in place to refund any payment where:-

- A representation proves successful
- Where the full payment period has lapsed and a street authority has decided to commence legal proceedings, however, subsequent payment has been received from a promoter.

11.7 Regulations allow a street authority to deduct the reasonable costs of operating the FPN scheme. There are no charges calculated to operate the scheme, and, in the context of this note, costs are only shown against the street authority. Whilst a street authority should already be monitoring the accuracy and timeliness of notifications as part of its duty to co-ordinate works, it is

anticipated that there will be increased costs for that street authority to give an FPN and ensure payment is received.

- 11.8 Whilst the FPN scheme is not a method for generating income, it is imperative that costs should be recovered, as failure to do so would be a disincentive to street authorities to operate the scheme.
- 11.9 JAG(UK) supports the approach that the only acceptable target for notification compliance is 100% for all works promoters.
- 11.10 Monitoring historic and contemporary notification compliance will assist all works promoters in targeting resources to generate improvements where they are most needed and ensure that this target is more than just an aspiration.
- 11.11 This document recommends that where an FPN has been given, a street authority should have effective procedures in place to take the appropriate legal action should it remain unpaid. Failure to recover legitimate penalty payments will significantly weaken the operational success of the scheme by sending a conflicting message to the industry.

12 Reporting Procedures

- 12.1 It is good practice for a street authority to report to works promoters regularly on the accuracy and timeliness of data

received for notifications relating to their network.

- 12.2 Good practice shows that the best results are achieved by street authorities and all works promoters working together. This includes the regular review of notification compliance issues. Reports of relevant poor achievement may be escalated to more senior representatives within all works promoter organisations.
- 12.3 Notwithstanding a demonstrable commitment to improving notification accuracy and timeliness to support the ability to co-ordinate works and maximise network availability, a street authority must still reserve the right to give an FPN in the appropriate circumstances.
- 12.4 Reports should be developed to provide works promoters and street authorities with information to address notification offences. These may be achieved through regular information reports showing details for all works promoters including:-
- Specific notification failures for different offences
 - Where FPNs have been given (regardless of receipt of a payment, or receipt of a notification correction)
 - FPN payments made
 - Representations made by works promoters

- The management of notification data correction
- Any actions taken by works promoters to improve data accuracy and timeliness
- Any ongoing legal proceedings through the Magistrates Court which cannot be the subject of discussion
- Outcome of any Magistrates Court proceedings

12.5 In this way, the industry as a whole can review any action that may be taken to improve notification accuracy and timeliness, and look to share any beneficial processes demonstrated by report findings.

12.6 The keeping of such information may not be a requirement of the NMD intervention criteria. However when applied to all works promoters, such reports can demonstrate an equal and consistent approach to all those who work on the highway.

12.7 Street authorities may consider that it is appropriate to report findings on a regional basis, together with discussions at their Regional Highway Authorities and Utilities Committee (HAUC) and a full annual report presented to HAUC (UK).

Annex A - Guidance on potential NRSWA offences covered by FPNs

The FPN scheme is aimed at encouraging data accuracy and timeliness from all works promoters to improve co-ordination of all works and contribute to the aims of minimising disruption.

In all circumstances, street authorities should pay due consideration to the following general issues:-

- Is the notification the correct type?
- Has the notification been sent on time?
- Does the notification contain all the relevant required information?
- Is that information correct?

Whilst much of this information can be checked via EToN, some of it may necessitate a site visit to ascertain if the information contained on the notification reflects the situation on site:-

- Is the works promoter working at the exact location indicated on the notification (eg. footway/carriageway)?
- Has the works location altered without the necessary revision to the notification?
- Is the works promoter working in accordance with the dates and times as stated on the notification?
- Is the traffic management set out as on the notification?

- Has the works promoter commenced early without agreement?
- Is the works promoter working without notification?
- Have remedial works been undertaken without the appropriate notification?
- Have the works been registered as indicated on the notification (ie. interim or permanent)?
- Have the works not taken place and not been cancelled?

Within sections 54, 55, 57, 70 and 74 of The 1991 Act, there are a number of offences that may arise in various ways. In addition to the advice given, street authorities should also consider the issues set out below. When considering if an offence has occurred, street authorities will need to decide if giving an FPN is the most appropriate course of action. Should they do so, reference should be made to the particular offence codes detailed in Annex E and the Code.

There are a number of other offences under The 1991 Act and these are not covered in this guidance note.

It should be noted that this is not intended to be an exhaustive text but could be used as a guide to the potentially more common situations.

Section 54: Advance notice of major works

Under s54, the following notification is affected as stated under the regulations:-

- Major Works Notice (three months notice period)

The prescribed notice information

The following information is required to be submitted on the s54 notice as stated in the regulations:-

- Unique reference number
- Date and time of entry (this is the time that the notice has been entered on the register)
- Expected start date
- Expected completion date
- Type of works (eg. major, standard, etc)
- Whether works are being carried out on a traffic sensitive road
- Whether works are being carried out on a road with special engineering difficulty designated
- Location of works
- The unique street reference number (USRN) that the works are to be carried out
- The ordnance survey grid reference (OSGR) of the mid-point of the works or at each end of trench works. It should be noted that this information is encouraged but is not mandatory
- Estimated inspection units
- General description of the works in plain English

- Traffic management proposals

There are a number of mandatory fields required within the notice which are not contained within this list. The omission of any of this mandatory information from the notice may strictly be considered as the submission of an invalid notice and a potential offence. However, a street authority should seriously consider whether it is appropriate to give an FPN in these cases and whether their actions will be seen as reasonable.

Potential Offences under Section 54

Section 54 notice not submitted

The offence of non-submission of a s54 notice is where the works meet the criteria that require a three month notice period prior to the works and have not been registered on the SWR. This may or may not become apparent when works commence.

For example, a works may have had a s55 notice submitted but in accordance with the type and duration of the works, required a three month advance notice. This would be classed as non-submission of a s54 notice.

In the case where works have commenced without a notice at all, if the works meet the criteria that they require a three-month notice then potentially two offences may arise under s54 and s55.

Street authorities should note that the non-submission of a s54 notice might not become apparent for almost three months, by which time the 91-day deadline for giving an FPN could have expired.

Required correct information not submitted in accordance with section 54

The failure by a works promoter to submit the mandatory correct information on a s54 notice, may strictly be considered as the submission of an invalid notice and thus a potential offence. However, such an offence may not be apparent until the works have commenced. Street authorities should therefore note that the omission of correct information on a s54 notice might not become apparent for almost three months, by which time the 91-day deadline for giving an FPN could have expired.

Section 55(5): Notice of starting date of works

The notices that are affected by s55(5) are:-

- Major Works – 10 days prior to commencement
- Standard Works – 10 days prior to commencement
- Minor Works with Excavation – 3 days prior to commencement.
- Urgent works

The prescribed notice information

The information required to be submitted on the s55(5) notice as per the regulations and as described under s54 above.

Potential Offences under Section 55(5)

For offences under s55, an FPN can only be given once the works have commenced. In some cases, a street

authority may need to provide evidence that the works did actually commence on site, along with details of the notice non-compliance.

Section 55(5) notice not submitted

The offence of non-submission of a s55(5) notice is where the works which require a s55(5) notice have commenced, and have not been registered on the SWR. It will not always be possible in such cases to rely on information contained in the register and must also be evidenced by observation of the works.

Required correct information not submitted in accordance with section 55(5)

Although a s55(5) notice may have been served on time, failure by a works promoter to submit the mandatory correct information on that notice, may be considered as the submission of an invalid notice and thus a potential offence. However, an offence does not arise until the works have commenced. Under such circumstances, a street authority may consider this an FPN offence.

Commencing works before the required notice period has lapsed without the required consent

If works have commenced before the required notice period has lapsed without agreement, a street authority may consider this an FPN offence. An early start request must be approved prior to commencement of works on site. Starting works without such approval may be considered as working without a valid notice.

Section 55(5) notice submitted after expiration of the validity period of the section 54 notice

There is a requirement to serve a s55 notice 15 days prior to the estimated start date included on the s54 notice. Should this not occur, it could be considered as not submitting the notice in a timely manner and a street authority may consider this an FPN offence.

Works Commencing after the Expiration of the Validity Period of a Section 55(5) notice

This could be considered as working without a valid notice. A street authority may consider this an FPN offence.

Section 55(9): Notice of Cancellation of Works

The prescribed notice information

The information required to be submitted on the s55(8) notice is as stated in the regulations.

Potential offences under Section 55(9)

Section 55(8) notice not submitted

The submission of a s55(8) notice is required where the deadline for commencement of works has expired and no works have commenced, or where the deadline for submission of a s55(5) notice following a s54 has also expired and no works have commenced. A street authority may consider a failure to submit a s55(8) notice in either of these scenarios as an FPN offence. It should be noted that the

requirement to submit a s55(8) cancellation notice is within two working days, beginning with the date on which the s54 or s55(5) notice ceased to have effect.

Required correct information not submitted in accordance with section 55(8)

Although a s55(8) notice may have been served on time, by not submitting the required information on that notice, a street authority may consider this an FPN offence. It should be noted that it is extremely unlikely that incorrect information will be submitted on this notice as it is merely a cancellation of an existing notice although if information was incorrect on the original notice it could have been repeated if not previously corrected.

Section 57: Notice of Emergency Works

Under s57, the following notices are affected, as stated under the regulations:-

- Immediate Works (both non-traffic sensitive streets and traffic sensitive streets) – two hours after works commence.
- This **does not** include Immediate(Urgent) works which require a s55 notice

The prescribed notice information

The information required to be submitted on the s57 notice as stated in the regulations, is as described under s54 above with the addition of the following:-

- Actual start date
- Clarification of intention or the fact the works have commenced

It should also be noted that the expected completion date is only required 'as soon as practical' after works begin, and not necessarily within two hours of work commencement.

Potential offences under Section 57

Not submitting the required notice within the prescribed timescale

Under the s57 provision, this notice can be submitted onto the SWR retrospectively. The prescribed timescale is not more than two hours after works have commenced. Where the two hour deadline lands after the transition from one working day to another, the notice must be submitted by 10:00am on the next working day. Please note that if works commence before 2:30pm on a working day, then the notice must be served on that same working day.

Should a works promoter fail to meet these prescribed timescales, a street authority may consider this an FPN offence.

Not submitting the correct required information in accordance with Section 57

The correct required information for a s57 notice is the same as a s55 notice with the exception that it must state that works are about to start or have already started on site.

Should a works promoter fail to submit the correct required information, a

street authority may consider this an FPN offence.

Section 70: Duty of undertaker to reinstate

The notices that are affected under section 70

The s70(3) notice is required to be given within 10 days from the date on which reinstatement is completed. It must state whether the reinstatement is interim or permanent, and provide details of the reinstatement.

The prescribed notice information

The information required to be submitted on the s70 notice as stated in the regulations is as follows:-

- Relevant reference number
- NGR (either one in the centre of small excavations or one at each end of trenches)
- The dimensions and description of each and every reinstatement
- The date the site was reinstated (start date of guarantee period)
- Construction method for all reinstatements
- Depth of reinstatement

Potential offences Under Section 70

Not submitting the correct notice within the prescribed timescale

Under the provision of s70, the notice must be submitted within 10 days from the date on which reinstatement is completed on site.

By not submitting a notice within the prescribed timescales, a street authority may consider this an FPN offence.

Street authorities should note that in accordance with NRSWA s98(1), 'Day 1' of the prescribed 10 days starts on the first working day following the date of reinstatement.

Not submitting the required information in accordance with Section 70

Should a works promoter fail to submit the required information on a s70 notice, a street authority may consider this an FPN offence. It is not a requirement to submit completely accurate reinstatement dimensions, although utilities are encouraged to ensure that this detail is accurate as possible, and authorities should record and indicate persistent failings.

Section 74: Charge for occupation of the highway where works unreasonably prolonged

Under Section 74, the following Notices are affected, as stated under the regulations:-

- Major Works
- Standard Works
- Minor Works

- Immediate Works (other than the actual start date notice)

The prescribed notice information

The following information is required to be submitted on the particular s74 notice as per the regulations in addition to the information requirements for s54, as stated previously:-

• Actual Start of Works

The date works actually commenced on site.

Please note that under noticing schemes, this notice is not required for s57 works or for s55 urgent works as those notices can be submitted up to two hours after works have commenced. It is also not required for Immediate Permits under permitting schemes as these can be submitted up to two hours after works have commenced, and the status should always be 'In Progress'.

• Revised Duration Estimate (Notices only)

The revised date of completion requested. This must be submitted before the original end date of the works.

• Works Clear (Notices only)

The date that interim reinstatement was completed, and all spoil and traffic management was removed from site.

- **Works Closed (Notices only)**

The date that permanent reinstatement was completed, and all spoil and traffic management was removed from site.

- **Works Stop (Permits only)**

The date that interim / permanent reinstatement was completed, and all spoil and traffic management was removed from site.

Potential offences under Section 74

Not submitting the required notice within the prescribed timescale

Under the s74 provisions, the following notices must be submitted as detailed below:-

- **Actual Start of Works**

Under noticing schemes, this notice must be served by the end of the next working day following the date on which the works began. Under permitting schemes, for category 0, 1, 2 and traffic sensitive streets this notice must be served by 10:00am on the next working day following the date on which the works began. For category 3, 4 and non-traffic sensitive streets it must be served by the end of the next working day following the date on which the works began.

- **Revised Duration Estimate**

This notice must be served before the original end date of the works. This is an offence under Noticing Schemes only.

- **Works Clear**

This notice must be served by the end of the next working day following the date on which the highway was fully returned to public use.

- **Works Closed**

This notice must be served by the end of the next working day following the date on which the highway was fully returned to public use.

- **Works Stop**

This notice must be served by the end of the next working day following the date on which the highway was fully returned to public use.

Should a works promoter fail to submit the notice within the prescribed timescales, a street authority may consider this an FPN offence.

Please note that, if the notice is served after 4.30pm, it is deemed to be served the next working day.

Not submitting the correct required information in accordance with section 74

The correct information required for a s74 notice is dependent on the type of notice served.

Should a works promoter fail to submit the correct required information, a street authority may consider this an FPN offence.

Annex B - Guidance on potential Permitting offences covered by FPNs

Part 3 of the Traffic Management Act 2004 made provision for the introduction of permit schemes designed to control the carrying out of specified works in specified streets in a specified area. This included provisions where a permit would be required to be obtained before specified works were carried out, and provisions for the imposition of conditions to be applied in relation to those specified works. Part 3 of the TMA also made provision for permit regulations to legislate for the content, preparation, operation and variation of permit schemes.

SI 2007 No. 3372 - The Traffic Management Permit Scheme (England) Regulations 2007, created 2 new offences under Part 3 of the TMA:-

- Regulation 19 - Undertaking specified works in a specified street in the absence of a permit (herein referred to as Working Without a Permit).
- Regulation 20 - Undertaking specified works in a specified street in a way that breaches the conditions attached to the permit issued for those works, or breaches the conditions that are applied to an immediate activity before a permit is issued for those activities (herein referred to as a Permit Breach).

Section 6.2 of the CoP Permits highlights modifications to NRSWA to accommodate the issuing of permits in place of notices. Some sections of NRSWA have been disapplied under permit schemes, thus removing the

offences that rest under them. However, certain NRSWA offences are still applicable to certain notifications within permit schemes:-

1. Offences created by regulations made under section 74
2. Offences created under s70, consisting of a failure to comply with subsection (3) or (4A)

Guidance for these offences is available in Annex A of this Advice Note.

As with the NRSWA notifications highlighted in Annex A, permit authorities should also pay due consideration to the following issues:-

4. Has the notification been sent within the prescribed period?
5. Does the notification contain all the relevant required information?
6. Is that information correct?

Much of this information can be checked through the LSWR, and failures can be rectified by refusing a permit application. However, permit offences have specific concerns with a promoter's failure to adhere to its obligations under a permit scheme, notably the requirement to have a valid permit in place before undertaking works, and to operate within the specific conditions of a permit. As a result, site visits will be necessary on many occasions to ascertain if an offence has occurred, and to gather any relevant evidence of that offence. Factors to consider include:-

- Does the works promoter have a permit for the works being undertaken?
- Is the works promoter working in accordance with the conditions set within the permit?
- Is the works promoter working in accordance with the dates and times as stated on the permit?
- Is the traffic management set out as per conditions set within the permit?
- Has the works promoter commenced works early without agreement?

Works Without a Permit

Under the Traffic Management Permit Scheme (England) Regulations 2007, regulation 19 states that it is an offence for a statutory undertaker to undertake specified works in a specified street in the absence of a permit.

Under regulation 19, the following notifications are affected:-

- Permit / Permit Application
- Variation / Variation Application

It should be noted that there are certain activities which are not registerable, and therefore do not require a permit. These activities are defined in chapter 9 of the CoP Permits.

Potential Offences under Regulation 19

Offences under regulation 19 only concern where works have actually started on site without a valid permit in

place. An FPN can only be given once works have commenced. Under most circumstances, it will be necessary for a Permit Authority to provide evidence that works have actually been undertaken, however, this may not always be necessary as certain evidence can be obtained via the LSWR.

Working with no permit at all

This is where no permit application or variation application has been sent by a promoter / received by a permit authority. Therefore, no permit exists on the LSWR for the specific works undertaken. It will not be possible in such cases to rely on the LSWR for evidential material. Evidence must be obtained through observation of the works (eg. photographs).

A backdated permit application for the works must be obtained from the works promoter using the unattributable works process (see HAUC(UK) Advice Note 2012/03). The FPN (and any other attributable information eg. inspection results) can then be attributed to the backdated permit.

In the event that receipt of a backdated permit application is taking an unacceptable amount of time for instances where works have been undertaken without a permit, a permit authority should consider the time frame for prosecution based on the date of the offence, and look to give a paper FPN using its own unattributable works notice reference to generate that FPN against.

Works started before day 1 of a permit

Although a permit application or variation application may have been served on time, and been granted within the prescribed period or gone deemed, works may not commence before the agreed start date unless a specific early start agreement has been made between the permit authority and the promoter prior to commencement. Under these circumstances, if works are found to have started before the listed start date without prior agreement, a permit authority may consider this an FPN offence. It is good practice to obtain photographic evidence for this type of offence, however, some information can be extracted from the LSWR if available.

Works undertaken after a permit application has been refused

If a permit application or variation application has been received by a permit authority, it must be granted by that permit authority, or go deemed before works can commence. If the application is refused by the permit authority then works may not go ahead. Should a permit authority find that a promoter has commenced works after a permit application has been refused, it may consider this an FPN offence. It is good practice to obtain photographic evidence for this type of offence, however, some information can be extracted from the LSWR if available.

Works undertaken in Breach of a Permit Condition

Under the Traffic Management Permit Scheme (England) Regulations 2007, regulation 20 states that it is an offence for a statutory undertaker to work in breach of a permit condition.

Under regulation 20, the following notifications are affected:-

- Permit / Permit Application
- Variation / Variation Application

Potential Offences under Regulation 20

Offences under regulation 20 concern where one or more specific permit conditions are considered to have been breached. An FPN for this type of offence can only occur where works have commenced on site. It will normally be necessary for a Permit Authority to provide evidence that the permit condition(s) have been breached.

As stipulated in 17.4.1 of the CoP Permits, all permit conditions should be precise as vague conditions will be difficult to enforce. All permit conditions should be specific to that particular permit, and should be stipulated in the relevant permit conditions text section of an EToN notification. If a perceived condition is not contained within this section, then it cannot be considered as given for that permit, and an FPN given for a breach of that condition may be not be enforceable by the Permit Authority.

Types of permit condition that may be breached

The following are types of permit conditions which could be imposed on a permit. A Permit Authority may take reasonable action in accordance with Regulation 20 if any conditions are breached:-

- Display of permit number
- Timing and duration
- Road space allowed
- Traffic Management provisions (incl. illustrations)
- Methodology of works
- Advance publicity requirements
- Environmental factors
- Other specific locally based conditions

Breach of Permit Conditions – Considerations

The giving of FPNs for offences where specific permit conditions are considered to have been breached, can be a complicated topic and one that should be approached with caution.

There are several different interpretations for how and where FPNs can / should be given to works promoters for permit breaches.

This is particularly evident with respect to giving multiple FPNs for different permit breaches found on the same day, and giving multiple FPNs for the same permit breach on successive days.

There is currently no definitive legal advice for the above types of instances, so it would not be prudent for this advice note to try and provide guidance for every potential permit breach scenario.

However, it should be stated that in the event that there is any uncertainty in giving an FPN for a permit breach, a Permit Authority should remind itself that a permit breach constitutes a criminal offence, and a situation could arise where a prosecution for the original offence proceeds to court. Before giving an FPN, a Permit Authority should assure itself that an offence has actually occurred, and that it is giving that FPN where it derives the most benefit. In the event of any uncertainty, legal advice should always be sought in order to avoid complications going forward.

Annex C – Statutory Background

The New Roads and Street Works Act 1991 (the 1991 Act) was introduced on 1 January 1993. This legislation placed statutory duties on both the street authority and undertakers with regard to carrying out works on the public highway.

Specifically, Part 3 of the 1991 Act provides detail of the statutory duties and obligations on both the street authority and undertakers, together with the associated offences.

A brief chronological background of the legislation is outlined below:-

- The 1991 Act was enacted following the comprehensive review of the Public Utilities Street Works Act 1950 by a committee chaired by the late Professor Michael Horne. The Committee's report was presented to the Government in 1985.
- The 1991 Act, supported by regulation and associated Codes of Practice, established the duties, obligations and responsibilities for both a street authority and undertakers. These duties include the duty on a street authority to maintain a register of street works carried out by undertakers and a duty on the undertaker to provide by notification the prescribed information within prescribed time periods regarding their works to the street authority.
- Under the 1991 Act, when an undertaker fails in his duty with regard to notification, he has committed an offence and is liable for prosecution.
- The 1991 Act also placed a duty on a street authority to co-ordinate works on its network. Undertakers have a duty to co-operate with the street authority.
- The original concept of a Central Register, where all the street works notice information would be kept, managed and controlled by the then Department of Transport was not realised and each street authority continued with their individual street works register. The original transfer format of these notices was a manual intensive paper based fax system. The industry moved from this paper system to an electronic transfer system on 20 March 1999 which allowed files to be transferred using a ftp format.
- Section 74 of the 1991 Act commenced in April 2001 to help control the over-running of undertakers' street works and in turn introduced additional notices to the process.
- The Traffic Management Act 2004 (the 2004 Act) was enacted following the passage through Parliament of the Traffic Management Bill and builds on aspects of the 1991 Act.
- The 2004 Act made changes to the 1991 Act and increased maximum levels of fines for prosecution under the 1991 Act through Schedule 1.
- On 4 January 2005, Part 2 of the 2004 Act was commenced placing a Network Management Duty on all local street authorities to facilitate the expeditious movement of traffic on their own

network and surrounding networks.

- A local street authority who fails in its NMD responsibility, risks intervention and the imposition of a Traffic Director to ensure that they comply with this duty.
- The 2004 Act also introduces the requirement for authorities own works to be registered.
- In recognition of the need for accurate and timely data for co-ordination purposes, whilst also acknowledging the difficulties in enforcing the noticing legislation through prosecution, the 2004 Act also introduced legislation to enable FPNs to be given for certain breaches of the notices regulations.
- The FPN scheme is considered to play an important role in providing confidence in notification data to assist in carrying out the NMD of the authority.
- Where an FPN is given for individual offences, the FPN scheme allows an undertaker to discharge its liability to prosecution under the legislation by payment of a fixed penalty.
- A street authority may still choose to take a prosecution without giving an FPN. It should also be noted that the street authority may also take a prosecution for the original offence where the FPN has not been paid.
- A street authority must act reasonably in applying the FPN scheme and this reasonableness may be tested in the Courts.
- The FPN scheme for notice offences, which came into force on 12 May 2008 is enabled by the insertion of Section 95A and Schedules 4A and 4B into the 1991 Act together with the prescribed Street Works (Fixed Penalty) (England) Regulations 2005.
- Schedule 4A details seven offences under the 1991 Act to which the FPN scheme applies. The Secretary of State may, by order, provide for other offences under Part 3 of the 1991 Act to be subject to the FPN scheme or that current offences cease to be subject to the FPN scheme.
- The 2004 Act also allows for the introduction of permit schemes within one or more street authorities defined by regulation.
- Part 3 of 2004 Act made provision for the introduction of permit schemes designed to control the carrying out of specified works in specified streets in a specified area. This included provisions where a permit would be required to be obtained before specified works were carried out, and provisions for the imposition of conditions to be applied in relation to those specified works. Part 3 of the 2004 Act also made provision for regulations to legislate for the content, preparation, operation and variation of permit schemes.
- SI 2007 No. 3372 - The Traffic Management Permit Scheme (England) Regulations 2007, enabled two new offences under Part 3 of the 2004 Act. It was stated that if an offence was committed under the new regulations, an FPN may be given in relation to that offence.

Annex D - Glossary of Terms

Unless expressed elsewhere, the expressions of terms used within this document are detailed below for reference:

Data Accuracy and Timeliness

This general expression may include the non-receipt of notices as well as notice information that is incorrect, omitted, misleading or the untimely receipt of notice information that does not comply with the requirements of notice regulations for content, timeliness or data validation and which therefore impacts on the ability of the street authority to fulfil their general duty to co-ordinate works under section 59 of the 1991 Act.

Enforcement Process

This general expression is used to refer to the action to be taken by an individual authority within its own strategy, policy and procedures.

Fixed Penalty Notices (FPN) Scheme

The FPN scheme is in accordance with section 95A of, and Schedule 4B to, the New Roads and Street Works Act 1991. An FPN is given to the undertaker promoting the works (or their agent) to offer the opportunity of discharging any liability to conviction for the fixed penalty offence by payment of a penalty.

Local Street Works Register (LSWR)

A LSWR is the statutory register as determined in Section 53 of the 1991 Act.

Network Management Duty (NMD)

This refers to Part 2 of the Traffic Management Act 2004 brought into force on 4 January 2005 by Statutory Instrument 2004 No 3110 The Traffic Management Act 2004 (Commencement No 2) (England) Order 2004. A DfT booklet entitled "Network Management Duty Guidance" was published in November 2004 and issued by the Secretary of State for Transport under Section 18 of the 2004 Act. Local traffic authorities in England must have regard to this guidance when exercising their network management duty under the Act.

Notification Correction Procedure

This procedure is only used to correct notification information and is not to be used to 'update' information. The procedures are explained in the Code and the CoP Permits.

The Code

The Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters.

The CoP Permits

The Code of Practice for Permits



Works Promoter

A collective term for all utilities, s50 licence holders and highway authorities.

Indeed anyone who works or intends to work on the highway network.

Annex E - Extract from Department for Transport Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters 2007

11. FIXED PENALTY NOTICES

11.1 Introduction

This chapter provides information about the Fixed Penalty Notice (FPN) scheme for street works.

The fixed penalty notice scheme is introduced by section 41 of the TMA, which inserted section 95A and schedules 4A and 4B into NRSWA. It provides for certain offences, under Part 3 of NRSWA, to become fixed penalty offences.

The objectives of the FPN system are to:

- encourage accurate and timely notice data
- improve the co-ordination of works
- improve data quality for all works promoters
- contribute to the aim of the Traffic Management Act 2004 - minimising disruption arising from road and street works.

Fixed penalty notices:

- apply to all undertakers, whether statutory undertakers or licensees under section 50 of NRSWA
- may be given only for the street, or section of street, in which the works take place
- cannot be given for street authority works for road purposes.

Part 3 of NRSWA details a range of statutory duties and obligations and the offences associated with failing to comply with them. All of these can be prosecuted in the Magistrates' Court. It is for the street authority of the street concerned to take action on offences.

11.2 Fixed Penalty Offences under Part 3 of NRSWA

At present, seven offences, under Part 3 of NRSWA, can be dealt with by FPNs. However, the Secretary of State may make an order providing for offences to become (or cease to be) fixed penalty offences (subject to resolution of each House of Parliament).

The scheme does not seek to impose new obligations and the offences included in this fixed penalty notice scheme remain the same offences and require the same level of evidence, whether they are dealt with by an FPN or through the Magistrates' Courts. The intention is to improve observance of the duties and obligations under Part 3, and thereby help reduce the disruption caused by street works.

An FPN offers an undertaker the opportunity to discharge any liability to conviction for a fixed penalty offence, by payment of a penalty.

However, the street authority retains the power to take an alleged offender to the Magistrates' Courts, instead of giving an FPN.



These offences refer to noticing failures. Therefore, payment of an FPN does not exempt an offender from other prosecutions or charges for offences under NRSWA.

It is important that accurate information is provided in notices given under section 54, 55 or 57, 70, 74 or 74A. Each set of works requires several notices, so it is possible that more than one FPN could be issued for each set of works. However, only one FPN should be issued per notice regardless of the number of errors.

The table below summarises the duties and obligations to which the seven offences relate. All parties are strongly recommended to consult NRSWA, the TMA and the latest regulations for more information. It is not possible to state either what constitutes an offence, as that is a matter for the Courts or the circumstances in which an FPN may be challenged. Whether a particular case justifies giving an FPN or prosecution in the Magistrates' Court would be for each authority to decide based on the facts of the case and their own independent legal advice.

Table 11.1: Summary of duties and obligations

Offence	Brief description	Duties and obligations
An offence under s.54(5)	Failure to comply with duties under s.54	<p>In certain cases prescribed in regulations prescribed periods of advance notice must be given to a street authority by an undertaker proposing to execute street works.</p> <p>Each notice must state the proposed start date on which it is proposed to begin the works and contain the information prescribed in regulations.</p> <p>After giving advance notice under s.54, an undertaker must comply with the requirements prescribed in regulations, or imposed by the street authority. These concern, the provision of information and procedural steps to co-ordinate the works with other proposed works, of any description.</p> <p>If an undertaker who has given advance notice under s.54 has not, before the starting date specified in the notice, given to the street authority a notice under s.54 in respect of the works, he must within such period as may be prescribed in regulations [Regulation 8(3)] give to that authority a notice containing prescribed information.</p>
An offence under s.55(5)	Beginning to execute works in contravention of s.55	<p>In relation to certain types of street works an undertaker must give prescribed periods of advance notice stating the proposed start date and containing information prescribed in regulations.</p> <p>This notice must be given to the street authority, to any other relevant authority, and to any other person having apparatus in the street, which is likely to be affected by the works.</p> <p>The undertaker must not begin the works without notice, or before the end of the notice period, without the consent of those to whom notice is required to be given.</p>
An offence under s.55(9)	Failure to give notice in accordance with s.55(8)	<p>If the notice of starting date ceases to have effect, the undertaker must give a further notice containing such information as may be prescribed in regulations and within the prescribed period.</p> <p>This notice must be given to the same people as the notice of starting date (see <i>above</i>).</p>
An offence under s.57(4)	Failure to give notice in accordance with s.57	<p>Where emergency works are of a kind which either do, or would, but for certain provisions in Schedule 3A NRSWA, require a notice of starting date under s.55, an undertaker executing such works must give notice stating his intention or, as the case may be, the fact that he has begun to execute the works.</p> <p>The notice must also contain such other information as may be prescribed in regulations.</p> <p>The notice must be given as soon as reasonably practicable, and in any event within two hours (or such other period as may be prescribed), to the persons to whom a notice of starting date would be required to be given under s.55 (see <i>above</i>).</p>
An offence under s.70(6) consisting of a failure to comply with subsection (3) or (4A)	Failure to comply with requirements to give notice of completion of reinstatement	<p>S.70 (1) imposes a general duty on the undertaker to reinstate the street.</p> <p>The undertaker must, within ten working days from the date on which the reinstatement is completed, give notice to the street authority of that completion. The notice must state whether the reinstatement is permanent or interim, and give such other information about the reinstatement as may be prescribed in regulations.</p> <p>In the case of an interim reinstatement, the undertaker must within ten working day from the date on which the permanent reinstatement is completed, give notice to the street authority of that completion. The notice must contain such other information about the reinstatement as may be prescribed.</p>

An offence created by regulations made under s.74(7B)	Failure to give a notice required by regulations under s.74 (charge for occupation of the highway where works unreasonably delayed)	<p>The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2007 create a criminal offence in respect of any failure to give a notice required by the regulations.</p> <p>An undertaker executing street works in a highway, to which these regulations apply, must, not later than the end of the day following the day on which the works begin, give the highway authority an “actual start of works notice”. This should confirm the actual start date and specify, by reference to the nationally consistent street gazetteer, the street or streets, in which the works are to be carried out.</p> <p>Once an undertaker has completed interim reinstatement, a written “works clear notice” must be given to the highway authority not later than the end of the day following the day on which the highway was returned fully to public use.</p> <p>An undertaker who has completed permanent reinstatement must give the highway authority a written “works closed notice” not later than the end of the day, following the day on which, the highway was returned fully to public use.</p> <p>If the duration of the works will exceed the prescribed period, a notice shall be given to the highway authority containing an estimate of the likely duration. The estimate duration of works should:</p> <ul style="list-style-type: none"> • for works for initial placing of the apparatus, be given with the application for a licence • for other works (not emergency) be given with the section 55 notice • for emergency works be given as soon as practicable after the works begin <p>This estimate is assumed to be agreed by the authority, unless it gives a written notice to the undertaker of its own estimate of a reasonable period for the duration within two days of receiving the undertaker's estimate.</p> <p>If the duration of the works exceeds the prescribed period, or is likely to exceed either the period stated in a previous estimate of duration or the period agreed or determined under section 74(2) to be a reasonable period, the undertaker shall give a notice in writing containing an estimate or a revised estimate of duration. This estimate is assumed to be agreed by the authority, unless it gives a written notice to the undertaker of its own estimate of a reasonable period for the duration within two days of receiving the undertaker's estimate.</p>
An offence created by regulations made under s.74A (11)	Failure to give a notice required by regulations under s.74 A (Charge determined by reference to duration of works)	<p>The Street Works (Charges for Occupation of the Highway) (England) Regulations 2001 create a criminal offence in respect of any failure to give a notice required by the regulations.</p> <p>An undertaker executing street works in a highway, to which these regulations apply, must, not later than the end of the day following the day on which the works begin, give the approved highway authority an “actual start of works notice”. This should confirm the start date and specify by reference to the nationally consistent street gazetteer, the street or streets in which the works are to be carried out.</p> <p>Once an undertaker has completed interim reinstatement, a ‘works clear notice’ must be sent to the approved highway authority, not later than the end of the day following the day on which the highway was returned fully to public use.</p> <p>An undertaker who has completed permanent reinstatement must give the approved highway authority a written ‘works closed notice’, not later than the end of the day following the day on which, the highway was returned fully to public use.</p>

11.3 Time Periods

An FPN should be given as soon as is reasonably practicable. It may not be given more than 91 calendar days after the commission of the offence, beginning with the day of its commission.

It should be noted that all time periods, unless otherwise stated, are in working days.

The penalty is £120. The period for payment is 36 calendar days, beginning with the day on which the FPN is given. The street authority may extend this period at its discretion in any particular case.

A discounted amount of £80 will apply if payment is made within 29 calendar days, beginning with the day on which the FPN is given. If the last day of the discounted period does not fall on a working day, the discounted payment period is extended until the end of the next working day.

If the undertaker pays either the full penalty, or the discounted amount, within the required period, no further proceedings can be taken for that offence. Once an FPN has been given, proceedings for that offence cannot commence until the end of the period for payment.

If the undertaker does not pay the penalty within the 36 calendar days then the street authority may bring proceedings in the Magistrates' Court for the original offence. A street authority should have sufficient time to collate its case and take action, within the six months deadline for bringing a case 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.

11.4 Guidance for the Street Authority

11.4.1 Basic principles

Street authorities are recommended to give FPNs where they have the most benefit. The street authority must act reasonably. It should apply the same due process for giving an FPN as it would in taking the undertaker to the Magistrates' Court.

Good communication between the street 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 street authority - provided that TMA powers for 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 under section 95A of NRSWA are used correctly and responsibly.

11.4.2 The Fixed Penalty Notice

The fixed penalty notice FPN must be given in the form prescribed in the regulations and included in Appendix H, Table H2.

The fixed penalty notice has two parts:

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

Guidance on completing the fixed penalty notice form:

<i>The Street Authority may choose to incorporate its 4-digit Data Capture Code</i>	
* (* Insert Street Authority name)	FIXED PENALTY NOTICE NEW ROADS AND STREET WORKS ACT 1991 (Section 95A and Schedules 4A and 4B)
FIXED PENALTY NOTICE Number:	
PART A	
Contact Tel No.	Works Ref No. * Street Authority No. * (*To be left blank where the offence relates to works in respect of which no notice has been given.)
TO:	DATE OF THIS NOTICE: dd mm yy
ADDRESS:	Undertakers are asked to provide, where possible, an electronic address as well as the postal address. If the undertaker fails to provide a postal address then the fixed penalty notice should be served in accordance with the options set out in the regulations
OFFENCE CODE: (See Part B) (NB: Only one offence code per fixed penalty notice)	
LOCATION:	Actual location of works
Insert relevant offence code from Part B	
DATE OF OFFENCE:	
DETAILS OF OFFENCE:	
This box needs to specify reasonable particulars of the circumstances alleged to constitute the offence and should be expanded if required	
<p>1. I am giving you this notice, in accordance with section 95A of, 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 £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 street authority may extend this period in any particular case if they consider it appropriate to do so (See paragraph 4(3) of Schedule 4B)).</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 £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 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 £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:	
These should be different officers. See section 10.6 for a fuller discussion of the Representations process.	Representations in writing should be made to this officer. This may be a named individual or department, but the authority should provide full contact details.

This must match the number given in Part A

PART B		
<p style="text-align: center;">*</p> <p style="text-align: center;">(* Insert Street Authority name)</p>	<p><u>INSTRUCTIONS ON METHODS OF PAYMENT</u></p>	<p style="text-align: center;">FIXED PENALTY NOTICE</p> <p style="text-align: center;">Number:</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 am and pm 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 am and pm 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>		
<p>OTHER METHOD/S - * (* Insert details where applicable.)</p>		

OFFENCE CODES AND DESCRIPTION (By reference to the New Roads and Street Works Act 1991)		
CODE	OFFENCE	BRIEF DESCRIPTION
01	An offence under s.54(5).	Failure to comply with duties under s.54 (advance notice of certain works, etc.).
02	An offence under s.55(5).	Beginning to execute works in contravention of s.55 (notice of starting date).
03	An offence under s.55(9).	Failure to give notice in accordance with s.55(8) (notice to be given on s.55 notice ceasing to have effect).
04	An offence under s. 57(4).	Failure to give notice in accordance with s.57 (notice of emergency works).
05	An offence under s.70(6) consisting of a failure to comply with subsection (3) or (4A).	Failure to comply with requirements to give notice of completion of reinstatement.
06	An offence created by regulations made under s.74(7B).	Failure to give a notice required by regulations under s.74 (charge for occupation of the highway where works unreasonably delayed).
07	An offence created by regulations made under section 74A(11).	Failure to give a notice required by regulations under s.74A (charge determined by reference to duration of works).

11.4.3 Giving the Fixed Penalty Notice

FPNs can be processed more easily if they are given electronically. But other means of giving the fixed penalty notice are permitted.

If an undertaker wishes to receive FPNs by electronic means, it should tell the street authority which method (eg EToN, e-mail or fax) and provide details of the EToN web service URL or e-mail address or fax number to be used as appropriate. The EToN web service details should be provided in the ODD submission (see Technical Specification for EToN). Where an address for service using a particular method for transmitting an electronic communication has been given for receipt of FPNs and the street authority has not been notified that the address is withdrawn then an FPN must be given by sending to that electronic address.

The street authority has to meet the three conditions set out in regulation 5(3) of the Street Works (Fixed Penalty) (England) Regulations 2007 when giving an electronic FPN:

'the fixed penalty notice shall be -

- (i) capable of being accessed by the person to whom it is being sent;*
- (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."

An electronic FPN is deemed to be given on the day and at the time the transmitting apparatus records as being the day and time of satisfactory completion of the transmission, unless the contrary is proved. This is subject to section 98(2) of NRSWA.

In all other circumstances, including system failures or if the street authority has tried and failed to use electronic means the fixed penalty may be given by alternative methods such as:

- delivering it to the person to whom it is to be given
- leaving it at his proper address
- sending it by first class post to him at that address or
- by any other agreed means.

For service of a fixed penalty notice in these circumstances, the "proper address" is the postal address given by the undertaker to the street authority for those purposes, or, the registered or principal office of a corporation, or the last known address of such person.

Section 98(2) of NRSWA provides that a notice given after 16:30 on a working day is deemed to have been given on the next working day.

The Technical Specification for EToN includes a non-mandatory message type for sending an FPN using EToN.

11.4.4 Withdrawing a fixed penalty notice

If a street authority considers that a fixed penalty notice FPN ought not to have been given, they may give a notice withdrawing the fixed penalty notice. If a notice withdrawing the fixed penalty notice FPN is given, the authority shall repay any amount that has been paid by way of penalty, and proceedings shall not be commenced or continued for that offence.

Guidance on completing the fixed penalty notice withdrawal form: is given below.

*	NOTICE WITHDRAWING FIXED PENALTY NOTICE	This number must match that given on the FPN form	FIXED PENALTY NOTICE
(* Insert Street Authority name)	NEW ROADS AND STREET WORKS ACT 1991 (Section 95A and Schedules 4A and 4B)		Number:
TAKE NOTICE that the fixed penalty notice numbered as above is hereby WITHDRAWN .			
NAME OF AUTHORISED OFFICER (<i>in block capitals</i>)			
DATE			

11.5 Guidance for Undertakers

11.5.1 Basic Principles

An FPN provides the opportunity for an undertaker to discharge any liability to conviction for certain offences by payment of a fixed penalty. An FPN will be given to the undertaker promoting the works and not to any contractor carrying them out. Noticing and other procedures under Part 3 can be carried out by an agent, but the undertaker should inform the street authority if it wishes FPNs to be handled by the agent as well. The undertaker remains responsible for managing the process of complying with its statutory duties and obligations under Part 3.

11.5.2 Payment of the fixed penalty notice

The undertaker should set up payment facilities, give contact details, and agree methods of payment with street authorities' finance departments.

The street authority should indicate all available methods of payment in part B of the FPN form. The main options are:

- electronic payment using the Bankers Automated Clearing Services ("BACS")
- on-line, via the street authority web site (if available)
- by post
- in person or
- by telephone.

Payment must either be accompanied by a list of the relevant FPN numbers and the amount being paid against each (discounted or full) or in the case of BACS payment

such a list should be provided separately. This applies, whichever form of payment is used

Remittance advice should be processed quickly and accurately.

Electronic payment methods are strongly encouraged. However, it is an undertaker's responsibility to ensure its preferred payment method is accepted and the hours within which it can do so

11.6 Representations

It is strongly recommended that representations should be made as soon as is reasonably practicable.

Before making an official representation, the undertaker is advised to try to resolve the issue informally contact the officer who gave the FPN. If this fails then the undertaker should make a formal written representation to the officer, individual or department, specified on the FPN as responsible for considering representations.

Street authorities should have a nominated official to consider all FPN representations and should ensure that a fair and open system is in place to consider them.

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

11.7 Application of Money by the Street Authority

The street authority may deduct from the fixed penalties received under Schedule 4B to NRSWA, the reasonable costs of operating the scheme. The street authority shall apply the net proceeds to develop policies to promote and encourage safe, integrated, efficient and economic transport facilities and services, to, from and within its area.

Street authorities need to be able to demonstrate that the costs of running the FPN scheme are reasonable, and that the net proceeds, after deducting those costs, are being correctly applied. Accounts are prepared annually. Although separate accounts are not required for FPN scheme, there should be an audit trail of income and expenditure.

The FPN scheme is NOT intended as an additional source of income for street authorities. The street authority should therefore not expect any net proceeds.

APPENDIX H: FIXED PENALTY NOTICES FORMS

Table H1: Fixed Penalty Offences

Offence	Brief description	Duties and obligations
An offence under s.54(5)	Failure to comply with duties under s.54	<p>In certain cases prescribed in regulations prescribed periods of advance notice must be given to a street authority by an undertaker proposing to execute street works.</p> <p>Each notice must state the proposed start date on which it is proposed to begin the works and contain the information prescribed in regulations.</p> <p>After giving advance notice under s.54, an undertaker must comply with the requirements prescribed in regulations, or imposed by the street authority. These concern, the provision of information and procedural steps to co-ordinate the works with other proposed works, of any description.</p> <p>If an undertaker who has given advance notice under s.54 has not, before the starting date specified in the notice, given to the street authority a notice under s.55 in respect of the works, he must within such period as may be prescribed in regulations [Regulation 8(3)] give to that authority a notice containing prescribed information.</p>
An offence under s.55(5)	Beginning to execute works in contravention of s.55	<p>In relation to certain types of street works an undertaker must give prescribed periods of advance notice stating the proposed start date and containing information prescribed in regulations.</p> <p>This notice must be given to the street authority, to any other relevant authority, and to any other person having apparatus in the street, which is likely to be affected by the works.</p> <p>The undertaker must not begin the works without notice, or before the end of the notice period, without the consent of those to whom notice is required to be given.</p>
An offence under s.55(9)	Failure to give notice in accordance with s.55(8)	<p>If the notice of starting date ceases to have effect, the undertaker must give a further notice containing such information as may be prescribed in regulations and within the prescribed period.</p> <p>This notice must be given to the same people as the notice of starting date (see <i>above</i>).</p>
An offence under s.57(4)	Failure to give notice in accordance with s.57	<p>Where emergency works are of a kind which either do, or would, but for certain provisions in Schedule 3A NRSWA, require a notice of starting date under s.55, an undertaker executing such works must give notice stating his intention or, as the case may be, the fact that he has begun to execute the works.</p> <p>The notice must also contain such other information as may be prescribed in regulations.</p> <p>The notice must be given as soon as reasonably practicable, and in any event within two hours (or such other period as may be prescribed), to the persons to whom a notice of starting date would be required to be given under s.55 (see <i>above</i>).</p>
An offence under s.70(6) consisting of a failure to comply with subsection (3) or (4A)	Failure to comply with requirements to give notice of completion of reinstatement	<p>S.70 (1) imposes a general duty on the undertaker to reinstate the street.</p> <p>The undertaker must within ten working days from the date on which the reinstatement is completed give notice to the street authority of that completion. The notice must state whether the reinstatement is permanent or interim, and give such other information about the reinstatement as may be prescribed in regulations.</p> <p>In the case of an interim reinstatement, the undertaker must within ten working days from the date on which the permanent reinstatement is completed, give notice to the street authority of that completion. The notice must contain such other information about the reinstatement as may be prescribed.</p>

An offence created by regulations made under s.74(7B)	Failure to give a notice required by regulations under s.74 <i>(charge for occupation of the highway where works unreasonably delayed)</i>	<p>The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2007 create a criminal offence in respect of any failure to give a notice required by the regulations.</p> <p>An undertaker executing street works in a highway, to which these regulations apply must, not later than the end of the day following the day on which the works begin, give the highway authority an “actual start of works notice”. This should confirm the actual start date and specify, by reference to the nationally consistent street gazetteer, the street or streets, in which the works are to be carried out.</p> <p>Once an undertaker has completed interim reinstatement, a written “works clear notice” must be given to the highway authority not later than the end of the day following the day on which the highway was returned fully to public use.</p> <p>An undertaker who has completed permanent reinstatement must give the highway authority a written “works closed notice” not later than the end of the day, following the day on which, the highway was returned fully to public use.</p> <p>If the duration of the works will exceed the prescribed period, a notice shall be given to the highway authority containing an estimate of the likely duration. The estimated duration of works should:</p> <ul style="list-style-type: none"> • for works for initial placing of the apparatus, be given with the application for a licence • for other works (not emergency) be given with the section 55 notice • for emergency works be given as soon as practicable after the works begin. <p>This estimate is assumed to be agreed by the authority, unless it gives a written notice to the undertaker of its own estimate of a reasonable period for the duration within two days of receiving the undertaker's estimate.</p> <p>If the duration of the works is exceeds the prescribed period, and is likely to exceed either the period stated in a previous estimate of duration or the period agreed or determined under section 74(2) to be a reasonable period, the undertaker shall give a notice in writing containing an estimate or a revised estimate of duration. This estimate is assumed to be agreed by the authority, unless it gives a written notice to the undertaker written notice of its own estimate of a reasonable period for the duration within two days of receiving the undertaker's estimate.</p>
An offence created by regulations made under s.74A (11)	Failure to give a notice required by regulations under s.74 A <i>(Charge determined by reference to duration of works)</i>	<p>The Street Works (Charges for Occupation of the Highway) (England) Regulations 2001 create a criminal offence in respect of any failure to give a notice required by the regulations.</p> <p>An undertaker executing street works in a highway, to which these regulations apply, must, not later than the end of the day following the day on which the works begin, give the approved highway authority an “actual start of works notice”. This should confirm the start date and specify by reference to the nationally consistent street gazetteer, the street or streets in which the works are to be carried out.</p> <p>Once an undertaker has completed interim reinstatement, a ‘works clear notice’ must be sent to the approved highway authority, not later than the end of the day following the day on which the highway was returned fully to public use.</p> <p>An undertaker who has completed permanent reinstatement must give the approved highway authority a written ‘works closed notice’, not later than the end of the day following the day on which, the highway was returned fully to public use.</p>

Table H2: Guidance on completing the fixed penalty notice form

<p style="text-align: center;">*</p> <p style="text-align: center;">(* Insert Street Authority name)</p>	<p>FIXED PENALTY NOTICE</p> <p>NEW ROADS AND STREET WORKS ACT 1991</p> <p>(Section 95A and Schedules 4A and 4B)</p> <div style="border: 1px solid black; padding: 2px; margin: 5px auto; width: 80%;"> <p><i>The Street Authority may choose to incorporate its 4-digit Data Capture Code</i></p> </div>	<p style="text-align: center;">FIXED PENALTY NOTICE</p> <p style="text-align: center;">Number:</p>
PART A		
Contact Tel No.	<p>Works Ref No. *</p> <p>Street Authority No. *</p> <p>(*To be left blank where the offence relates to works in respect of which no notice has been given.)</p>	
TO:		<p>DATE OF THIS NOTICE: dd mm yy</p>
ADDRESS:	<p>Undertakers are asked to provide, where possible, an electronic address as well as the postal address. If the undertaker fails to provide a postal address then the fixed penalty notice should be served in accordance with the options set out in the regulations</p>	
<p>OFFENCE CODE: (See Part B) (NB: Only one offence code per fixed penalty notice)</p>		
LOCATION:	<p>Actual location of works</p>	<p>Insert relevant offence code from Part B</p>
<p>DATE OF OFFENCE:</p>		
<p>DETAILS OF OFFENCE:</p> <p>This box needs to specify reasonable particulars of the circumstances alleged to constitute the offence and should be expanded if required</p>		
<p>1. I am giving you this notice, in accordance with section 95A of, 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 £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 street authority may extend this period in any particular case if they consider it appropriate to do so (See paragraph 4(3) of Schedule 4B)).</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 £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 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 £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</p>		
<p>NAME OF AUTHORISED OFFICER (in block capitals):</p> <p>.....</p>		
<p>DATE:</p> <p>.....</p>		

These should be different officers.

Representations in writing should be made to this officer. This may be a named individual or department, but the authority should provide full contact details.

PART B		
<p style="text-align: center;">*</p> <p style="text-align: center;">(* Insert Street Authority name)</p>	<p style="text-align: center;"><u>INSTRUCTIONS ON METHODS OF PAYMENT</u></p> <div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: 80%;"> <p style="font-size: small;">This must match to the number given in Part A</p> </div>	<p style="text-align: center;">FIXED PENALTY NOTICE</p> <p style="text-align: center;">Number:</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 N/A to be inserted 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 am and pm 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 their 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 am and pm 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 their 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>		
<p>OTHER METHOD/S - * (* Insert details where applicable.)</p>		

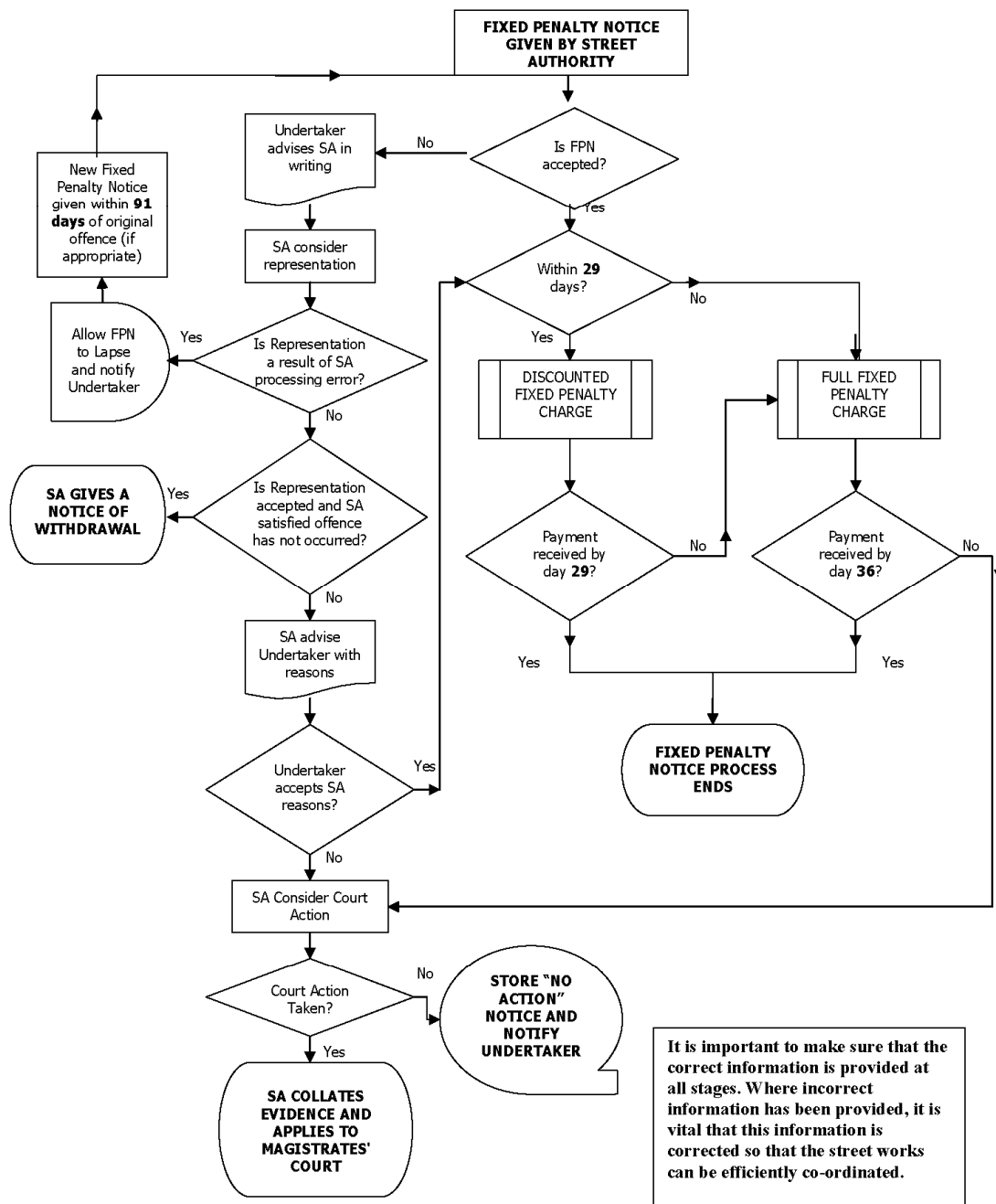
OFFENCE CODES AND DESCRIPTION		
(By reference to the New Roads and Street Works Act 1991)		
CODE	OFFENCE	BRIEF DESCRIPTION
01	An offence under section 54(5).	Failure to comply with duties under s.54 (advance notice of certain works, etc.).
02	An offence under section 55(5).	Beginning to execute works in contravention of s.55 (notice of starting date).
03	An offence under section 55(9).	Failure to give notice in accordance with s.55(8) (notice to be given on s.55 notice ceasing to have effect).
04	An offence under section 57(4).	Failure to give notice in accordance with s.57 (notice of emergency works).
05	An offence under section 70(6) consisting of a failure to comply with subsection (3) or (4A).	Failure to comply with requirements to give notice of completion of reinstatement.
06	An offence created by regulations made under section 74(7B).	Failure to give a notice required by regulations under s.74 (charge for occupation of the highway where works unreasonably delayed).
07	An offence created by regulations made under section 74A(11).	Failure to give a notice required by regulations under s.74A (charge determined by reference to duration of works).

Table H3: Guidance on withdrawing an FPN.

This number must be the same as the one given on the FPN form

<p>*</p> <p><i>(* Insert Street Authority name)</i></p>	<p>NOTICE WITHDRAWING FIXED PENALTY NOTICE</p> <p>NEW ROADS AND STREET WORKS ACT 1991</p> <p>(Section 95A and Schedules 4A and 4B)</p>	<p>FIXED PENALTY NOTICE</p> <p>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>.....</p>		
<p>DATE</p> <p>.....</p>		

Fixed Penalty Notice process diagram



Explanation of chart

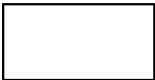
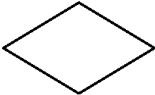




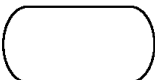
'Allow FPN to lapse'.	If the representations made by the undertaker are on the grounds that the SA had made an error on the FPN but the SA still believes that the grounds for giving the FPN were valid, the SA can allow the 36 day period to pass causing the FPN to 'lapse'. A SA is not able to give two FPNs for the same offence. The SA 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 SA decides not to commence proceedings in the Magistrates' Court, the SA should file the FPN as a "No Action" notice.
	Process
	Decision
	Document
	Delay
	Predefined process
	Sequential storage
	Terminator

Table H4: Form of the fixed penalty notice form

*	FIXED PENALTY NOTICE NEW ROADS AND STREET WORKS ACT 1991 (Section 95A and Schedules 4A and 4B)	FIXED PENALTY NOTICE Number:
PART A		
Contact Tel No.	Works Ref No. * Street Authority No. * (*To be left blank where the offence relates to works in respect of which no notice has been given.)	
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 section 95A of, 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 £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 street authority may extend this period in any particular case if they consider it appropriate to do so (See paragraph 4(3) of Schedule 4B)).</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 £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 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 £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		
<p style="text-align: center;">*</p> <p style="text-align: center;">(* Insert Street Authority name)</p>	<p><u>INSTRUCTIONS ON METHODS OF PAYMENT</u></p>	<p>FIXED PENALTY NOTICE</p> <p>Number:</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 .</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 am and pm 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 their 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 am and pm 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 their 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>		
<p>OTHER METHOD/S - * (* Insert details where applicable.)</p>		

OFFENCE CODES AND DESCRIPTION		
(By reference to the New Roads and Street Works Act 1991)		
CODE	OFFENCE	BRIEF DESCRIPTION
01	An offence under section 54(5).	Failure to comply with duties under s.54 (advance notice of certain works, etc.).
02	An offence under section 55(5).	Beginning to execute works in contravention of s.55 (notice of starting date).
03	An offence under section 55(9).	Failure to give notice in accordance with s.55(8) (notice to be given on s.55 notice ceasing to have effect).
04	An offence under section 57(4).	Failure to give notice in accordance with s.57 (notice of emergency works).
05	An offence under section 70(6) consisting of a failure to comply with subsection (3) or (4A).	Failure to comply with requirements to give notice of completion of reinstatement.
06	An offence created by regulations made under section 74(7B).	Failure to give a notice required by regulations under s.74 (charge for occupation of the highway where works unreasonably delayed).
07	An offence created by regulations made under section 74A(11).	Failure to give a notice required by regulations under s.74A (charge determined by reference to duration of works).

Annex F - Extract from Department for Transport Code of Practice for Permits (March 2008)

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	
* (* Insert Permit Authority name)	FIXED PENALTY NOTICE for PERMIT OFFENCES [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:	
ADDRESS:		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	
OFFENCE CODE: (See Part B) (NB: Only one offence code per fixed penalty notice)			
LOCATION:		Location of activity Insert relevant offence code from Part B	
DETAILS AND DATE OF OFFENCE: Specify reasonable particulars of the circumstances alleged to constitute			
<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 at identifying the fixed penalty notice number stated above.</p>			
NAME OF AUTHORISED OFFICER (in block capitals):			
DATE:			
These should be different officers.		Representations in writing should be made to this officer. The authority should provide full contact details.	

PART B		
* (* Insert Permit Authority name)	<p style="text-align: center;"><u>INSTRUCTIONS ON METHODS OF PAYMENT</u></p> <div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 10px auto;"> 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>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:
(* Insert Permit Authority name)		
TAKE NOTICE that the fixed penalty notice numbered as above is hereby WITHDRAWN .		
NAME OF AUTHORISED OFFICER (in block capitals) :		
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.



APPENDIX H: FIXED PENALTY NOTICES FORMS

For details of the Tables please see chapter 18

FORM OF FIXED PENALTY NOTICE

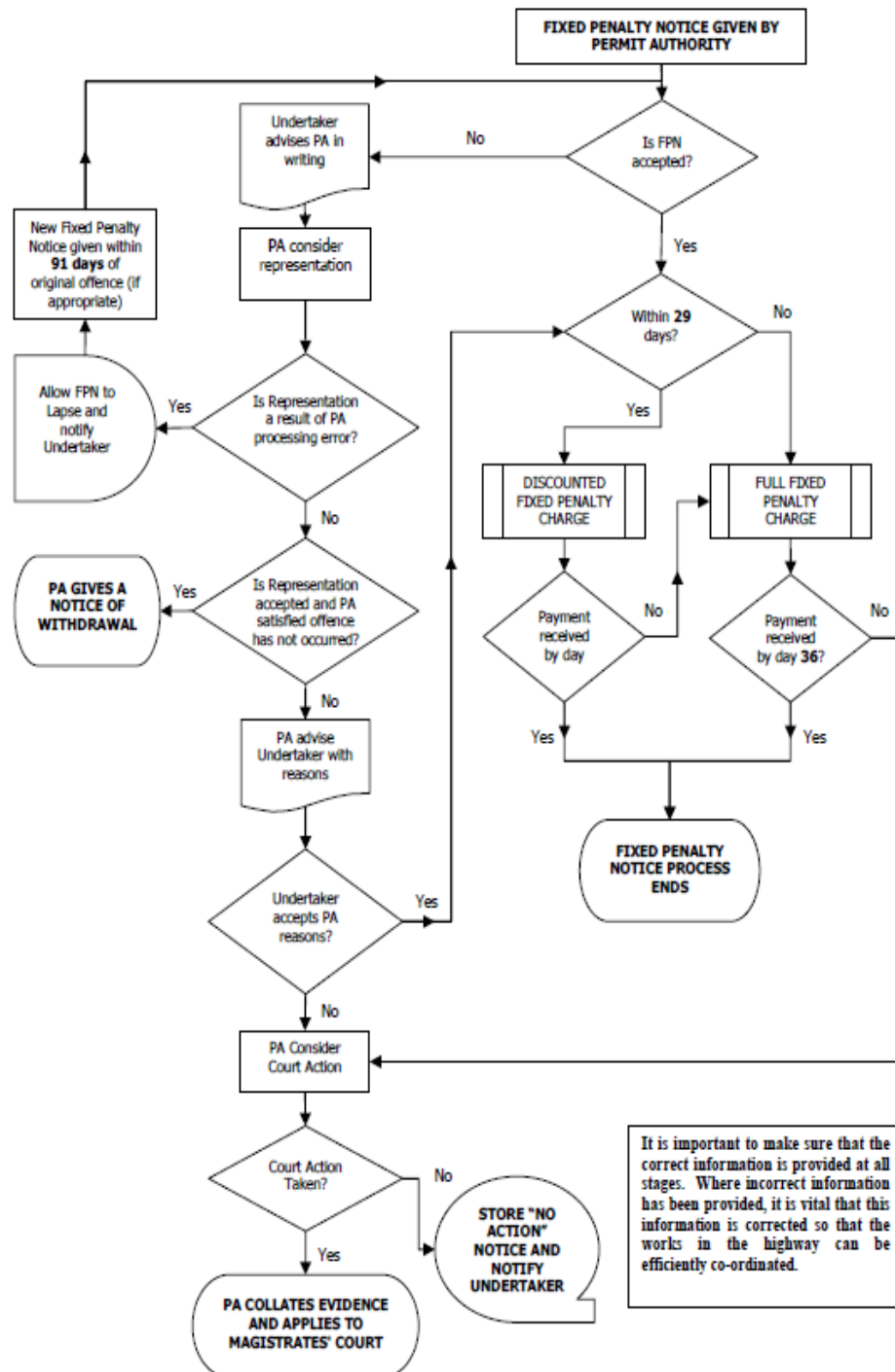
* <i>(*Insert Permit Authority name)</i>	FIXED PENALTY NOTICE [NAME OF PERMIT SCHEME ORDER] THE TRAFFIC MANAGEMENT PERMIT SCHEME (ENGLAND) REGULATIONS 2007	FIXED PENALTY NOTICE Number:
PART A		
Contact Tel No.	Permit Reference No. *	
TO:	DATE OF THIS NOTICE: dd mm yy	
ADDRESS:		
OFFENCE CODE (See Part 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		
*	<u>INSTRUCTIONS ON METHODS OF PAYMENT</u>	FIXED PENALTY NOTICE Number:
(* Insert Permit Authority name)		
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.		





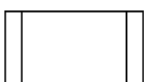


OFFENCE CODES AND DESCRIPTION		
(By reference to the Traffic Management Permit Scheme (England) Regulations 2007)		
CODE	OFFENCE	BRIEF DESCRIPTION
PS01	An offence under Regulation 19(1)	Undertaking specified works on a specified street without a permit where an applicable Permit Scheme requires one.
PS02	An offence under Regulation 20(1)	Breaching a permit condition.

FORM OF NOTICE WITHDRAWING A FIXED PENALTY NOTICE

<p style="text-align: center;">*</p> <p>(* Insert Permit Authority name)</p>	<p style="text-align: center;">NOTICE WITHDRAWING FIXED PENALTY NOTICE</p> <p style="text-align: center;">[NAME OF PERMIT SCHEME ORDER] REGULATION 27 OF THE TRAFFIC MANAGEMENT PERMIT SCHEME (ENGLAND) REGULATIONS 2007</p>	<p style="text-align: center;">FIXED PENALTY NOTICE 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