



**JAG (UK) GUIDANCE DOCUMENT**

**2/2013**

**FPNs**

**Good Practice Advice Note**

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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.

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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

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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

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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

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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, indentifies the permitting

offences to which the FPN

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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.

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



period of 29 days or £120 if

paid within 36 days.

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:-

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• The Codes

• The Street Works (Fixed

Penalty) (England)

Regulations 2007

• The Traffic Management

Permit Scheme (England)

Regulations 2007

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



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.

7.3 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

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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.

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• 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.

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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

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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

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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

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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

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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

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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:-

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• 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

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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

20

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

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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

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• 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).

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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.

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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.

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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.

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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:-

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• 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

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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.

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• 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.

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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:-

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• 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.

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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.

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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.

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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

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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.

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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

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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.

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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

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

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