

# **Newcastle City Council**

## **Road Activities Permit Scheme**

### **For Road Works and Street Works**

**In accordance with the Traffic Management Act 2004**

**2 August 2019**

## Document Control

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## 1. Introduction

## 1.1 Background

Part 3 of the Traffic Management Act (TMA) 2004 introduced Permit Schemes as a new way in which activities in the public highway could be managed and to improve Authorities' ability to minimise disruption from road and street works. This Permit Scheme is known as the Newcastle City Council Road Activities Permit Scheme or hereby known within this document as the "Permit Scheme".

Promoters should make themselves aware of the content of Part 3 of the Traffic Management Act 2004 ("TMA") (Sections 32 to 39) and the Traffic Management Permit Scheme (England) Regulations 2007 ("the 2007 Regulations"), Statutory Instrument 2007 No. 3372 made on 28 November 2007, as amended by the Traffic Management Permit Scheme (England) (Amendment) Regulations 2015, Statutory Instrument 2015 No. 958 made on 26 March 2015 ("the amendment regulations") and the 2007 Regulations and the Amendment Regulations are hereinafter referred to together as "the Regulations".

Due regard has also been had to the Statutory Guidance for Highway Authority Permit Schemes (October 2015). In preparing the Permit Scheme Newcastle City Council has undertaken a full consultation with all relevant stakeholders as required under the regulations.

## 1.2 The Permit Authority

The Permit Scheme is operated as a single scheme by Newcastle City Council as the Street Authority, hereinafter referred to as "the Permit Authority".

## 1.3 Relationship to NRSWA

Permit Schemes (as defined with the TMA) provide an alternative to the notification system of the New Roads and Street Works Act (NRSWA) 1991 in the following ways;

- Instead of informing a Street Authority about its intention to carry out works in their area, a statutory undertaker has to book time on the highway by obtaining a permit from the Permit Authority;
- Under a Permit Scheme, the Highway Authority's activities undertaken by itself, its partners or agents are also treated in the same way as a statutory undertaker;
- The street Authority has chosen to implement a Permit Scheme on all of the roads under its control;
- Conditions can be applied to the works which impose constraints on dates and times of activities and the way in which work is carried out; and
- A Permit Authority has greater control over the variations that can be applied to works such as time extensions.

## 1.4 The Permit Scheme

This Permit Scheme has been prepared in accordance with the guidance issued by the Department for Transport to assist Street Authorities wishing to become Permit Authorities. It has also been prepared with due regard to the Equality Act 2010.



## 1.5 Changes to NRSWA Legislation

Where it is implemented on the specified streets and in accordance with the Regulations, the Permit Scheme will result in the non-application and modification of the sections of NRSWA as detailed in Appendix D.

Section 74 (Charges for unreasonably prolonged occupation of the highway) apply only to statutory undertakers activities, however, the Permit Scheme makes arrangements for shadow charging in relation to timings, durations and monitoring of Highway Authority activities to ensure parity for all promoters.

Section 58 (Restrictions on works followings substantial road works) apply only to undertakers activities as restricting the Highway Authority may be contrary to the statutory duty to maintain the highway under other obligations such as the Highways Act 1980.

## 1.6 Activities

The generic term “activities” has been used rather than “works” to reflect the fact that the scheme may eventually cover more than road and street works in subsequent regulations. These are the specified activities as set out in the Regulations.

The term “promoters” has been used for both the statutory undertaker and the Highway Authority as it applies to a person or organisation responsible for commissioning activities in streets covered by the Permit Scheme.

The Highway Authority operating the Permit Scheme must apply for permits in the same manner as a statutory undertaker. All fees and charges for the Highway Authorities will not apply in the application of the Permit Scheme, but shadow fees and charges will be collated and monitored in demonstration of parity.

The Permit Scheme applies to the road categories as set out in paragraph S1.3.1 of the Specification for the Reinstatement of Openings in the Highway (current edition) and shall not apply to roads not maintained at the public expense. Permits will be required on all road categories within the Permit Authority’s area.

To assist in the identification of the road categories the Permit Authority will provide through the National Street Gazetteer (NSG) custodian an additional street record for each street for which a permit to carry out activities is required.

## 1.7 Objective of the Permit Scheme

The Permit Scheme has been prepared with due regards to section 59 of NRSWA to co-ordinate works of all kinds on the highway and also achieving the overriding statutory objectives and duties under the TMA 2004. It is an important aspect of the duties and policies for the Permit Authority to manage activities in the street, so as to minimise the impact of those activities, while allowing essential activities to take place. The specific objectives of the Permit Scheme are as follows;

- Reduce both the number of street and highways works, and their duration through proactive management of activities on the highway to minimise disruption to the travelling public;

- Ensure accurate information is available to the public through improved quality and timeliness of information received from all works promoters;
- Encourage proactive and collaborative planning and working between all works promoters; and
- Ensure all works promoters are treated fairly and with parity.

## 1.8 Aligned Objectives

The vision within the “LTP3: The Third Local Transport Plan for Tyne and Wear” is that “Tyne and Wear will have a fully integrated and sustainable transport network, allowing everyone the opportunity to achieve their full potential and have a high quality of life. The strategic networks will support the efficient movement of people and goods within and beyond Tyne and Wear, and a comprehensive network of pedestrian, cycle and passenger transport links will ensure that everyone has access to employment, training, community services and facilities.” This vision is therefore reliant upon improving the efficiency and reliability of Tyne and Wear’s highway routes and supports the importance of the proposed permit scheme.

## 1.9 Operation of the Permit Scheme

In operating the Newcastle City Council Permit Scheme, the permit Authority will follow, where possible, the Highway Authority and Utilities Committee (HAUC) England Guidance, Operation of Permit Schemes (including. Permit Condition Text), Feb 2017 and its successors)

Newcastle City Council will fully support the aims and objectives of any nationally significant transport or utility infrastructure projects and have designed the scheme with the flexibility to implement them accordingly.

Please note that as from 1 August 2019, all references to Electronic Transfer of Notifications (EToN) in all Newcastle City Council’s Permit Scheme documentation shall be replaced with ‘by electronic means.’ When the scheme is next reviewed a new order approving this amendment will be subsumed into the text of all scheme documentation.

## 2. Principles

### 2.1 Co-ordination

All activities performed for the purposes of highway maintenance can reduce the width of the street available for public use whoever the promoter is. The scale of the disruption experienced is relative to the activity type and the capacity of the street, however, we must not ignore the impact small scale works in non-traffic sensitive streets have on the residents as there is still an aspect of disruption in their lives.

Effective co-ordination and management by the Permit Authority is essential to ensure that traffic disruption is minimised whilst allowing promoters time and space to complete their works.

Before any specified works are carried out on a specified street a permit must be obtained from the Permit Authority in accordance with the Permit Scheme.

Under the Permit Scheme, all promoter activities are treated equally with regards to co-ordination and setting of conditions.

The Permit Authority will actively promote a cultural change in attitudes from its own departments that play an important role in the overall network management by;

- Working closely with all its own Council construction teams to improve working practices; and
- Better engagement with all departments involved in the planning and development control process to bring in working practices and processes to the forward planning process to ensure better coordination and delivery of all activities that affect the highway.

## 2.2 Promoters

It is essential that everyone undertaking activities on the highway take both the Permit Scheme objectives and the broader TMA objective of expediting the movement of traffic into account. To do this the Authority and the promoter must adhere to four key principles;

- 1) The need to balance the potentially conflicting interests of road users, promoters and their customers;
- 2) The importance of close co-operation and liaison between the two parties;
- 3) Acknowledgement that pre-planned activities, planned programmes and working practices may have to be adjusted to meet coordination provisions in statutory objectives; and
- 4) The provision of timely, clear, accurate and complete information.

The Permit Scheme will give the Permit Authority greater influence over how and when activities are carried out although the initial responsibility for planning, supervising and carrying out activities remains with the promoters.

Promoters must consider the needs of public transport operators, pedestrians, motorists, cyclists, horse riders or any other road user paying particular attention to those with disabilities when planning and executing activities on the highway. They should also ensure they have considered and co-ordinated activities with other existing road activities and considered how their proposals will integrate with those and the impact and effect of the operation on the local and strategic highway network.

Some considerations are listed, but not limited to;

- Timing of activities;
- The methods of working;
- Road safety;
- Health and Safety, The Construction(Design and Management) Regulations 2015 (CDM);
- Noise, light and traffic management;
- Activity programme management; and
- Co-ordination with other promoters.

Proposals should be discussed with other interested parties in advance such as neighbouring Authorities, Network Rail, bus and rail operators, schools, businesses and residents and where necessary modified when appropriate and practical. Other appropriate bodies include but are not limited to those representing disabled people, pedestrian and cycle groups, hauliers, local tourism boards, the Environment Agency and English Heritage.

The greater the disruption the sooner the application should be made and promoters should recognise that statutory application periods are only a minimum and longer should be given where practicable.

Promoters should also take into account the space needed for the works, the storage of plant and materials and other associated plant such as welfare cabins and car parking areas. Where this is outside the working area including if on another street, the promoter must consider the impact of this on disruption to traffic, local residents, businesses and the local environment. These areas may be subject to another permit application and conditions applicable as appropriate to the disruption, road type or network congestion.

### 2.3 Collaborative Working

The Permit Authority actively encourages collaborative working and will offer fee reductions or waived fees for cooperative working between promoters. Each promoter should apply for a permit in the normal way.

This includes, but is not limited to, the following;

- Trench sharing;
- Concurrent activities on a single street;
- Traffic Management sharing;
- Multi-promoters sharing road space;
- Multi-promoters sharing road closures; and
- Timing works on nearby streets which affect traffic flow in order to minimise overall effect.

Whilst collaborative working is encouraged it is understood that such arrangements can cause problems with contractual, CDM and other management arrangements but every opportunity should be explored.

Therefore, where two or more promoters demonstrate collaborative working reduced permit charges may be applicable. See Section 12.5 for fee discounts related to collaborative working.

Where two or more activity promoters for street activities and activities for road purposes enter into such arrangements, one must take on the role of the primary promoter with the overall responsibility for the activities and will be the point of contact with the Permit Authority.

While the secondary activity promoter(s) will be required to make a permit application for the activity for which they are responsible, only the permit application made by the primary activity promoter will need to show the number of estimated inspection units.

The primary activity promoter's permit application must give details of the other activity promoter(s) involved and the extent of the collaborative working. The primary activity promoter must also ensure that the estimates of the activity duration are agreed and confirmed with the secondary activity promoter(s) when submitting the application.

While the Permit Authority will issue permits to all of the activity promoters involved, not just the primary activity promoter, the fees will be discounted (please refer to section 12.5) to reflect the collaborative approach, subject to all criteria being met.

The primary activity promoter will excavate the trench and install its own apparatus with the secondary activity promoter(s) installing their apparatus in the same trench. The primary activity promoter will backfill and reinstate the trench unless it has previously been agreed with the Permit Authority and documented by the works promoter via EToN, that the secondary activity promoter(s) will undertake the reinstatement, in which case the responsibility for the reinstatement will rest with the activity promoter who undertook this reinstatement, although the registration through EToN for this activity will still have to be submitted by the primary activity promoter.

The other promoters in these circumstances must indicate a “No excavation” status on the Section 74 Work Stop Notice. Notice text within the work stop notice must indicate that reinstatements have been registered by the promoter responsible for the reinstatement.

This process may vary in line with future amendments to the technical specification for EToN.

## **2.4 Forward planning**

Forward planning information on large-scale and potentially disruptive activities is included in the permits register at the earliest opportunity. This will enable promoters to;

- Engage in early co-ordination;
- Consider joint working;
- Consider trench sharing; and
- Consider other planned activities.

Forward planning information does not remove the need to apply for the appropriate permit at the appropriate time.

## **2.5 Non-Discrimination: Parity Treatment**

A key objective of the Permit Scheme is that it treats all activities covered on an equal basis. The Regulations provide for permit schemes to include both street works by statutory undertakers (as defined in NRSWA) and highway works (as defined in Section 86 (2) of NRSWA) as works for road purposes. Although the term “specified works” is used generically in the Regulations, “activities” is used in the Permit Scheme to encompass both types of works and anticipates subsequent sets of Regulations which may extend the scope of permit schemes to other activities on the street.

Whilst not all activities require a permit, Promoters are strongly recommended to check the Permit Authority street works register to ensure that they are not planning to work at the same time as other activities in that street.

Permits for all qualifying street works and works for road purposes, and all applications (which can only be made by licensed undertakers or Highway Authorities), will be treated in a non-discriminatory way, as required in Regulation 40 of the regulations. The Highway Authority's activities and their applications will be treated in exactly the same way as those of a licensed undertaker's with regard to co-ordination and the setting of conditions.

In order to show that the Permit Authority is operating the Permit Scheme in a fair and equitable way each Officer responsible for making any decision related to a permit application from the Highway Authority will be separate from the highway activities of the Authority.

### **3. Specified Activities**

#### **3.1 Activities requiring a Permit**

The Permit Scheme controls activities undertaken on any publicly maintained highway and defined as registerable activities in Chapter 9 of The Code of Practice.

The term registerable corresponds to what are specified works under the Regulations and are registerable for all promoters and information related to them has to be recorded on the register.

The term 'specified activities' is used generically in the permit regulations therefore, the term 'activity' is used in this scheme to encompass any registerable activity that requires a permit. This includes;

- Street works as in part 3 of NRSWA, except for works by licensees under section 50 of NRSWA;
- Works for road purposes as defined by section 86 of NRSWA – maintenance and improvement works carried out by, or on behalf of the highway Authority; and
- Other activities that may be introduced under future regulations.

#### **3.2 Activities for Road Purposes**

The requirements of the Permit Scheme apply equally to both Highway Authority and statutory undertakers' activities with the exception that fees will not be charged for permits issued for the Highway Authority's own activities for road purposes. Promoters of activities for road purposes must ensure that they have followed the equivalent processes for activities and declare that they have fulfilled these requirements in their applications.

The Permit Authority must demonstrate parity of treatment for all activity promoters which will be measured through appropriate key performance indicators (See Section 14).

Diversions to accommodate works for road purposes shall require a permit and will require the statutory undertaker to apply for the permit. However, the statutory undertaker may wish to apply for reduced fees as per the fee matrix and in the reductions in Section 12.5.

#### **3.3 Activities not requiring a Permit before they start**

Immediate activities do require a permit, although as such activities are concerned with emergency or urgent situations, an activity promoter can start the activity before applying for a permit but they **MUST** apply for the permit within 2 hours of starting on site.

If the works commence out of working hours then a permit must be applied for by 10am the next working day.

Immediate activity permit applications must comply with the relevant conditions.

#### **3.4 Activities for which no Permit is required**



Non registerable activities are those which do not fall under the criteria set out in Section 3.1 and can take place without requiring a permit. If the circumstances change so that the works then falls under registerable activities, the undertaker must obtain the correct permit within the required timescales. This may require the activity to cease and the permit obtained, however, it is strongly recommended that contact is made with Newcastle City Council to discuss this as continuity of works may be allowed by agreement provided the permit is applied for within adequate timescales and the relevant fee payable.

The activities for which no permit is required is outlined below;

- Activities executed in a street pursuant to a street works licence issued under Section 50 of the NRSWA are not included in the Permit Scheme but have to follow the normal procedures as required through Newcastle City Council. A permit should be submitted into the register but no permit fee will be charged;
- Third party repairs carried out under 171 of the Highways Act e.g. repairs to private apparatus;
- Traffic census surveys;
- Pole testing which does not involve excavation;
- Fire service vehicles parked adjacent to fire hydrants being tested, on the provision that this is done outside traffic sensitive hours; and
- Works not involving excavation in non-Traffic Sensitive situations.

To enable full co-ordination of all activities which occupy the highway promoters of activities are encouraged to submit a permit to ensure that road space is available. This will ensure that their activity will not be interrupted by other activities for which a permit has been granted. No fee will be charged for the granting of permits for exempt activities unless during the course of the activity the classification of the activity changes.

### **3.5 Street lighting**

The definition of works for road purposes may include some works carried out by work promoters, such as street lighting. It is for works promoters to ensure that permit applications for such activities are notified or registered, as appropriate. Responsibility for new connection works to the Street Authority asset resides with the Street Authority.

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

### **3.6 Common elements with NRSWA**

To facilitate working across Highway Authority boundaries, the Permit Scheme uses the same or similar definitions or requirements as used in the NRSWA notice system for;

- Registerable activities
- Categories of activities (major, standard, minor and immediate);
- Street gazetteers, including street referencing by means of a Unique Street Reference Number (USRN) and Additional Street Data (ASD);
- Street reinstatement categories as defined in the specification for the reinstatement of reinstatement of openings in the highway;

- The distinction between main roads and minor roads, where such distinctions are relevant; and
- Streets designated as protected, having special engineering difficulty or traffic sensitivity.

The Permit Authority will be set up to receive applications, issue and receive notices and otherwise communicate electronically. All such communications relating to works on the highway should be made using the Electronic Transfer of Notifications (EToN) where possible and available

## **4. Specified Streets**

### **4.1 Definition of the Term “Street”**

As defined in section 48(1) of NRSWA, street means the whole or any part of any of the following, irrespective of whether it is a thoroughfare (a) any highway, road, lane, footway, alley or passage; (b) any square or court; (c) any land laid out as a way whether it is for the time being formed as a way or not.

For the purposes of the Permit Scheme, the term “street” refers to that length of road associated with a single USRN. Where a single street on the ground has more than one USRN, separate permits will be required for each USRN to which an activity relates.

### **4.2 Streets covered by the Permit Scheme**

The Permit Scheme will apply to ALL streets forming Newcastle City Council’s adopted highway network. The street gazetteer will be updated with the relevant information indicating it to be a permitted street well in advance of the implementation date. The street gazetteer will be available to all work promoters via the National Street Gazetteer (NSG) concessionaire’s website.

### **4.3 Identification of Streets**

All streets that are subject to the Permit Scheme will be identified via the ASD record and held on the National Street Gazetteer (NSG) concessionaire’s website alongside the NSG data, where the Operational District responsible for maintaining the street is defined as operating a Permit Scheme.

### **4.4 Motorways and Trunk Roads**

Motorways and trunk roads within the Newcastle City Council boundary for which the Authority is not the Highway Authority are excluded from the Permit Scheme.

### **4.5 Non-Maintainable Highways**

Streets that are not publically maintainable highways, other than those that are expected to become a maintainable highway, are not included in the Permit Scheme.

### **4.6 Streets to be adopted as Maintainable Highways**



Where a street is expected to become a maintainable highway, controls on specified activities under the Permit Scheme will only apply after the street has become a maintainable highway. The highway authority will update the National Street Gazetteer (NSG) accordingly. Permit applications will be required for any works on such streets with effect from the next publication of NSG. A minimum of one calendar months' notice will be provided to all affected stakeholders..

#### **4.7 Reinstatement categories**

The reinstatement categories of streets used in the Permit Scheme are the same as the reinstatement categories under NRSWA and as given in the ASD. If any street does not have a category on the NSG the street will be treated as a category 4 for the purposes of the Permit Scheme and the overrun charges and other elements as necessary.

### **5. Permits General**

#### **5.1 Permit Validity**

Permits are valid from the start date to the end date of the permit. The start and end dates are calendar days and will include weekends and bank holidays even if these are not working days subject to the conditions on the permit. The permit will include information on the duration of the works.

Permits will only be valid from the start date to the end date of the permit on category 0 to 2 or traffic sensitive streets, and between adjusted dates based on the allowed starting window in the start date for category 3 and 4 streets that are not designated as traffic sensitive. The start and end dates will be calendar days, notwithstanding reference elsewhere to working days, and will include weekends and bank holidays.

The permit will allow an activity to be carried out during the specified duration and a promoter working outside those dates will not have a valid permit and will be committing an offence. If the activity cannot commence on the proposed start date, or within the allowed starting window, a variation is required.

#### **5.2 Permit Variation**

Changing circumstances for any promoter may necessitate applications for permit details and/or conditions to be modified. Variations to permits if acceptable to the Permit Authority will be confirmed by the granting of an amended permit showing the revised details.

If the Permit Authority initiates the variation then there will be no fee charged for the granting of this revised permit, however, if the variation is initiated by the activity promoter then a variation fee will be applied.

Further information on variations refer to Section 9.

#### **5.3 Error Correction**

Where the Permit Authority identifies an error in data recorded in, or submitted for recording, in the Permit Authority register, they will contact the activity promoter to discuss and agree the corrections to be made. Where the activity promoter identifies an error, they will contact the Permit

Authority to discuss and agree the corrections to be made. If an error has been identified on an application, the activity promoter shall submit a permit variation request by the end of the next working day following the agreement of the correction. This permit variation request should include the corrected data and the reference number provided while agreeing the correction; it must also state the data elements that have been corrected.

The works data variation process is described in the EToN Technical Specification, which also defines those data elements for which an agreement reference is required prior to changes.

A variation fee will not be applicable if a modified application is submitted prior to the permit being granted by the Permit Authority. If the permit has been granted, a fee is applicable for granting the variation application unless otherwise and specifically agreed between both parties.

#### **5.4 Working without a Permit**

It is an offence for an activity promoter or a person contracted to act on its behalf to undertake specified activities in a specified street without a permit, except where the Permit Scheme provides that this requirement does not apply. Where it is believed that such an offence is being committed, the Permit Authority may impose a Fixed Penalty Notice (FPN) or pursue legal action via a prosecution and require the party concerned to remove the activity and reinstate the street back to its full and intended use.

#### **5.5 Phasing of Activities**

A phase of an activity is a period of continuous occupation of the street (whether or not the activity is taking place for the whole time) between the start and completion of the works. As one permit can only contain one phase, the dates given in a permit application will denote the dates for that phase. A phase can end only when all the plant, equipment and materials, including any signing, lighting and guarding have been removed from the site.

#### **5.6 Linked Activities**

An activity promoter should clarify that an activity is to be carried out in phases on the application. Each phase will require a permit and possibly also a Provisional Advance Authorisation (PAA), which again should ideally use the original works / activity reference but failing that it must be cross referenced to the original notice or permit. Phased activities must relate to the same activity and be within the scope of the description provided in the initial application. These could be a single or multiple linked excavation, or a trench dug progressively along the street as part of a continuous operation.

The Technical Specification for Electronic Transfer of Notices (EToN) allows for project references, activity references and phase types;

- A phase of an activity is a period of continuous occupation of the street (whether or not work is taking place for the whole time) between the start and completion of the works;
- A promoter must clarify that an activity is to be carried out in phases on the initial PAA or permit application;
- For a major activity, the EToN activity reference number must be used within the PAA;

- Linked activities carried out at separate locations in a street must be treated as belonging to the same set of works. All works in these circumstances must be related and operationally dependant on each other;
- Unconnected activities carried out by the same promoter in one street must not be treated as parts, or phases, of a single activity;
- A new main or cable run, which includes new customer connections, can be classed as one phase if all the activity is completed in a single occupation of the street. Otherwise, a new permit will be required for the customer connections stage; and
- Even if an activity involving more than one street forms part of one project in management and contractual terms, separate permits and PAA's must be obtained for each street or USRN.

## 5.7 Reinstatement

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

## 5.8 Remedial Works

Remedial works correct defects identified in accordance with the Code of Practice for Inspections, and its successors, and other associated regulations and codes of practice and their successors. They will need to ideally use the original works / activity reference but if this is not available a promoter will need to cross-reference the original activity promoter reference number. Those remedial works to remedy dangerous defects will be categorised as immediate emergency activities however, the burden of proof of proving the validity of this categorisation will remain with the promoter. Remedial works will require a new permit in all cases.

## 5.9 Interrupted Activities

In the event of an activity being interrupted and delayed, for instance due to damage to a third party's plant or while missing apparatus is acquired, the activity promoter shall contact the Permit Authority to agree what action should be taken. Where the Permit Authority is satisfied that the excavation can remain open while the repairs are implemented or the equipment obtained, then a permit variation will be required. However, where it is considered that the opening should be reinstated and the road returned to full traffic use, then the activity promoter will need to apply for a further permit to complete the activity at a later date.

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

Whenever an activity is interrupted, the activity promoter should contact the Permit Authority before starting any of the processes above.

## 5.10 Charges for Overrunning Street Works/Activities

Charges for overrunning street works/activities under Section 74 of NRSWA, will be made alongside the permit scheme and will follow Statutory Instrument 2012 No. 2272, The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) (Amendment) Regulations 2012 and its successors.

The Regulations incorporate the process of setting and modifying the duration of the activity through the permit application, approval and variation processes, with the option to treat all or parts of a duration extension as chargeable overrun. See Section 17.8 for further information on Section 74 overruns.

### **5.11 Early Start**

Where a promoter cannot adhere to the minimum application period, the Permit Authority and any other interested party will consider applications where mitigating circumstances justify this. Permission to allow a promoter to submit such an application is solely at the discretion of the Permit Authority and any other interested party where applicable but will not be unreasonably withheld.

Where an application is granted, thereby providing such permission, it will be recorded by the Permit Authority, where permission is not granted, the application will be refused.

An early start must be requested when applying for the PAA or the permit as this will allow the Permit Authority and any other interested party to make a full and informed decision as to the facts of the early start request with all details of the permit available. There will be no additional charges to the permit fee, however, where a variation application is made to request an early start after the permit has been granted or deemed, a variation charge will apply, therefore early engagement with the Permit Authority is encouraged.

### **5.12 Actual Start**

Notification of the actual start for the activity must be given to begin the reasonable period. An activity must not begin before the date given in the permit, unless an early start has been agreed; to do so would be committing an offence. Once the activity has begun, a Notice of Actual Start of an activity must be given by 10.00am the next working day on category 0, 1, 2 and traffic sensitive streets and by the end of the next working day in the case of category 3 and 4 non traffic-sensitive streets. In the case of an immediate activity the permit application will be taken as the actual start date notice as it is made after the activity has commenced, and the status should always be "In Progress". Notice of Actual Start must be given in accordance with the requirements described in the Technical Specification for EToN. The identity of the main contractor or, if appropriate the Direct Labour Organisation ("DLO") must be provided on the actual start date notice. This should always be the organisation with whom the undertaker has the contract, and not any subcontractor who may be actually carrying out the activity.

### **5.13 Starting windows**

The Permit Scheme has been designed so that permits have the flexibility of a starting window where appropriate.

### **5.14 Category 0-2 and Traffic Sensitive Streets**

In Category 0-2 and traffic sensitive streets, the duration of the activity will exactly match the time from the start date to the end date, for example: start date Wednesday 1 June, end date Friday 10 June, duration ten days including the weekend. The permit start date will be the proposed start date of the activity. If the activity cannot begin on the permit start date, the promoter should inform the Permit Authority [on the previous day by telephone]. There is no automatic extension of the permit in these circumstances.

If the activity promoter could not complete the activity before the permit end date, it would need to apply for a permit variation (extension). This would be required even if the extra days are on a weekend. A Permit Authority may or may not agree to a permit variation (extension), depending on the circumstances, and the activity promoter may be subject to overrun charges.

### **5.15 Category 3-4 Non-Traffic Sensitive Streets**

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

The starting windows are;

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

When the activity commences, the activity promoter shall submit actual Start of activity notice, setting out the Actual Start of the activity, and the duration must be the same as that given in the permit. The permit end date is automatically adjusted to allow the agreed duration if the activity starts on any day up to the last day of the starting window. The duration applies to continuous calendar days and, once the activity starts, the activity promoter has only the successive calendar days in duration in which to complete the activity subject to the conditions applicable granted within the permit.

### **5.16 Works Clear**

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

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

### **5.17 Works Closed**

A Works Closed notice is used following permanent reinstatement. The Notice of Works Closed must be given by the end of the next working day following the day on which the activity was closed. All spoil, excess materials, stores and all signing, lighting and guarding must be removed from site before the activity can be regarded as completed for a Works Closed Notice. If temporary

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

## **5.19 Application Requirements**

Each application for a permit must include the information indicated in Section 7.

## **6 Permits – Types**

### **6.1 Types covered by the Permit Scheme**

There are two types of permit covered by the Permit Scheme as set out below.

### **6.2 Provisional Advance Authorisation (PAA)**

PAA's, are a means of enabling significant activities to be identified, co-ordinated and programmed in advance by allowing activities to be provisionally planned in by the activity promoters, pending the Permit Authority's subsequent decision on whether, and with what conditions, to grant a permit for the activities.

An activity promoter who wishes to undertake Major Activities (see 6.5 below) on a specified street shall apply for a PAA at least 3 months in advance of those activities starting on the highway, or as agreed with the Permit Authority. Subsequent applications for permits for Major Activities that have not been preceded by a PAA will not be accepted by the Permit Authority.

Each application for a PAA will be limited to one street.

An application for a PAA must include a full description of the activity and specify start and end dates, although the start date may be considered as provisional and can be amended in the application for a final permit with full justification of the amendment of the start and end dates.

A fee will be charged for a PAA in addition to the fee which is charged for the issue of the major permit unless other conditions have been met by pre-agreement with the Permit Authority.

The granting of a PAA does not prevent the Permit Authority from subsequently refusing to grant a major permit to which the PAA relates, if circumstances should change. For major works to commence the promoter will be required to provide the final detailed information in support of the application for a permit at least 10 working days before the activity is due to commence unless otherwise agreed.

### **6.3 Permits**

Permits are the full permit applications (PAs) with final details for all registerable activities on the specified street. The information which shall accompany a permit is set out in Section 7 and wherever practicably possible be supplied using the latest EToN system and in any event within the timescales as set out within Section 7.22.

Promoters should note that in line with Regulation 9 (9) of the regulations requires applicants to copy any permit applications to any Authority, statutory undertaker or other relevant body that has requested to see notices or permit application on certain streets.



The minimum timescales are set out in section 7.22 however, promoters are encouraged to contact the Permit Authority early so that conditions can be discussed and, if possible, an agreement can be reached so that the application is approved quickly.

#### 6.4 Classes covered by the Permit Scheme

There are four classes of permit covered by the Permit Scheme as set out below.

#### 6.5 Permit for Major Activities

Major Activities are those which;

- have been identified in an organisation's annual operating programme or, if not identified in that programme, are normally planned or known about at least six months in advance of the date proposed for the activity; or
- other than immediate activities, require a temporary traffic regulation order (i.e. not a temporary traffic notice) under the *Road Traffic Regulation Act 1984* for any other activities; or
- other than immediate activities, have a duration of 11 working days or more.

Major Activity Permits are usually required for the most significant activities on the highway, as Permit Authorities will generally need the most advance notice in for such activities. This is why it is expected that Permit Authorities will choose to incorporate the requirement to obtain a **provisional advance authorisation (PAA)** as part of the application process for a Major Activity Permit. This should incorporate a minimum of three months advance notice of the proposed activity, to enable appropriate planning and co-ordination. The application for a **PAA** should include a description of the proposed activity and the proposed start and end dates.

#### 6.6 Permit for Standard Activities

Standard Activities are those activities, other than immediate or major activities, that have a planned duration of between 4 and 10 days inclusive. Activities lasting less than 10 days but which require a traffic regulation order, such as a temporary road closure, or are part of the promoters operating programme will be classified as Major Activities and will be subject to the application process for a Major Activity. (See Section 7 for application process). However, as per DfT Guidelines may be subject to reduced fees for Non-Traffic Sensitive Roads or in Non-Traffic Sensitive times.

An application for a Standard Activity Permit shall be submitted to the Permit Authority in accordance with the timescales given in 7.22 below and must include a description of the proposed activity together with the proposed start and end dates of the activity.

#### 6.7 Permit for Minor Activities

Minor Activities are those activities, other than immediate or major activities, where the planned working duration is 3 days or less. An application for a Minor Activity Permit shall be submitted to the Permit Authority in accordance with the timescales given in 7.22 below and must include a description of the proposed activity together with the proposed start and end dates of the activity.

## 6.8 Permit for Immediate Activities

Immediate Activities are those which;

- a) are emergency activities as defined in section 52 of NRSWA;
- b) are activities (not being emergency activities) which are required;
  - to prevent or put an end to an unplanned interruption of any supply or service provided by the works promoter;
  - to avoid substantial loss to the promoter in relation to an existing service; and
  - to reconnect supplies or services where the promoter would be under a civil or criminal liability if the reconnection is delayed until after the expiration of the appropriate permit period.
- Includes the activity that cannot reasonably be severed from such activities.

Given the nature of Immediate Activities, the activity may commence without a permit. However, where it is necessary to carry out immediate activities requiring traffic control on traffic sensitive streets, where indicated on the ASD, promoters of such activities must contact the Permit Authority by telephone immediately, and in any case must apply to the Permit Authority within 2 hours of the activity starting. Immediate activities will be subject to relevant conditions

Remedial works for dangerous defects may be classed as emergency works.

## 6.9 Burden of Proof

The activity description must clearly justify why the activity is immediate.

If the Permit Authority disputes whether an activity, or part of an activity, is immediate, the promoter must demonstrate, conclusively that it is. Those elements of the activity, which could be subject to the normal application period, cannot be included in the immediate category. Failure to do so will constitute an offence and appropriate enforcement action will be taken by the Permit Authority. This may include, but is not limited to the revocation of the permit and the requirement to resubmit against the correct permit type and/or criminal proceedings against the work promoters.

## 7. Making a Permit Application

### 7.1 Permit Authority Requirements

Any promoter of specified activities who wishes to carry out such an activity on a specified street must first obtain a permit from the Permit Authority. The permit will allow the promoter to;

- carry out the specified activity;
- at the specified location;



- between the dates shown; and
- subject to any conditions the authority may require to be included.

Permit applications must contain the required level of information in order for the Permit Authority to properly assess the application and if necessary request that appropriate conditions be attached.

Permit application timings will vary according to the proposed activity however, where early applications are received the Permit Authority will be able to give better advice in relation to the use of conditions, requirements and deliver more effective coordination.

Where the activity is dependent on a Temporary Traffic Regulation Order (TTRO), temporary traffic signal approval or the suspension of parking regulations, the relevant timescales should be considered and applicants are advised to submit their requests for TTROs and/or temporary traffic signal approval when applying for the appropriate permit.. The application process will begin when the Permit Authority receives the applications, as defined in the EToN Specifications, not when the permit application is sent.

## **7.2 Submitting an Application**

Permit and PAA applications should be made electronically, as set down in EToN, unless there is a failure in the electronic system or the activity promoter does not have access to electronic systems, in which case an alternative application method such as e-mail, and post will be acceptable, but this must be pre-agreed in writing with the Permit Authority. In these instances, the definitive format of both paper and electronic permit applications must comply with that given in the current EToN Technical Specification.

Where an alternative to EToN is being used, the pre-agreement must include how the receipt of the permit/variation application and the associated responses are to be made to ensure no misunderstanding of receipt and response times.

## **7.3 System Failure**

In the event of a system failure, activity promoters shall adopt the EToN Technical Specification procedure. FPN's, Section 74 charges and any other penalties that result due to system failures may be waived. However, activity promoters must inform the Permit Authority about system failures immediately and get an agreement in principle to avoid the creation of FPNs and Section 74 charges in advance.

## **7.4 Compliance with EToN**

All applications must comply with the definitive format and content given in the current EToN Technical Specification and or its successors.

## **7.5 Use of Plain English**

The description of activities must be in plain English, avoiding industry specific jargon. A standard description used consistently with added text for exceptions which will allow for quicker analysis of applications and ongoing coordination.

## **7.6 One application per street**

Each application shall refer to activities in only one street and for one activity only; multiple activities **MUST NOT** be grouped under one permit. Where a project covers more than one street, all related applications must be cross-referenced, and the project reference included on each application.

## **7.7 Activities covering several streets**

Where the specified activity, as part of the same project involves a number of specified streets, a separate PAA and/or permit will be required for each street. Permit applications for specified activities covering more than one specified street shall be cross-referenced to all related applications. Fees which involve several permits may be subject to a discount (refer to section 12.5 for information on discount and incentive options) if the applications are submitted together and cross referenced. For consistency with NRSWA, a street will correspond to a USRN.

## **7.8 Notification to Interested Parties**

Where the ASD indicates other interested parties, Provisional advance applications and permit applications shall be copied to those parties.

## **7.9 Consultation Requirements**

Activity promoters must carry out necessary consultations as set down in sections 88, 89 and 93 (as amended) and sections 90 and 91 of the NRSWA.

## **7.10 Restriction on Activities**

Where an activity promoter wishes to apply for a permit to carry out specified activities on a specified street where a notice has been issued under Sections 58 or 58A of NRSWA, and the activities are not covered by the specific exemptions of that notice, the activity promoter must make an application for the Permit Authority's consent specifying the grounds on which the consent is sought. If the consent is given, then the Permit Authority will provide an agreement reference number. This agreement reference number must be included in the specific field for agreement details with the permit application for the permit to be approved.

## **7.11 Contact Person**

Each permit application must include the contact details of the person appointed by the activity promoter to deal with any problems that may occur during the activity, including any provision made for out of hours contact where required. Where collaborative works are to be performed, the identity of the lead promoter must be provided.

## **7.12 USRN**

Each application must relate to a single street only. Where a single street on the ground has more than one USRN, separate permit applications will be required for each USRN to which an activity relates.

### 7.13 Description of Activity and Collaborative Promoters

For all works a sufficiently detailed description of the activity, clearly setting out what the works are, and their purpose must be provided to allow the Permit Authority to assess the likely impact of the activity. Where collaborative working is proposed the promoter must provide a detailed description of the collaborative scheme of the works.

### 7.14 Location

The activity promoter must provide accurate location details using a spatial feature (point, line or polygon) covering the extent of the works based on National Grid References (NGR). In the case of small excavations, an NGR should be given for the centre of the excavation; for larger works, a polygon representing the works footprint is required. In addition, dimensions should be given of the space that will be taken up by the activity in the street, including space for the storage of plant/materials, activity space, safety zone, provision for pedestrians and traffic management.

If any NGR contained within a permit application is considered to be inaccurate or misleading the application may be refused.

Major works – Start and end NGR's must be supplied, however, a poly line is desirable particularly if proposed works areas or trenches are not in a straight line and follow a road or require a road crossing.

Standard, Minor, Immediate – A centre point must be provided as a minimum, however, a poly line is desirable if;

- the activity area or trench is expected to be more than 10m in length;
- there are multiple separate locations on the same street; and
- proposed works areas or trenches are not in a straight line and follow a road or require a road crossing.

NGR's must be supported by the notice location text facility as defined in the EToN technical specification and must contain relevant and detailed information specific to the application including but not necessarily limited to the following;

- house names and numbers; and
- proximity to fixed points where house names and numbers cannot be obtained (e.g. distances from junctions or lamp columns).

If the activity location description of the proposed permit is considered to be inadequate for any reason the application may be refused.

### 7.15 Timing and Duration

The permit will allow an activity to be carried out for a specific duration between the start and end date on the permit (allowing for the starting window on the start date where that applies). A

promoter working outside those dates will not have a valid permit and will be committing an offence. If the activity cannot commence on the proposed start date and a variation is required, the promoter must inform the Permit Authority no later than the preceding day by telephone and an agreement made. There is no automatic extension of the permit end date in these circumstances and if the promoter believes that the work could still be completed before the permit end date then they can begin work on a subsequent day in line with the rules of the starting window. Otherwise, the promoter must apply for a variation to the permit.

The permit will not be valid before the start date on the permit and will cease to be valid once the end date (adjusted in line with the starting window if appropriate) has passed, unless a variation has been granted.

### **7.16 Illustration**

PAA's, PA's and any other activities that pose disruption as directed by the Permit Authority should be accompanied by an illustration(s) of the activity and should include details of the activity, and the extent of highway occupancy. The illustration may comprise plans, sections, digital photographs and similar material. Illustrations may also be submitted with the application for standard activities located on a designated traffic sensitive street and streets of engineering difficulty.

Illustrations should be sent via EToN as an attachment wherever possible.

### **7.17 Techniques to be used for Underground Activities – Methods**

Details of the planned techniques, including open cut, trench share, minimum dig technique or no dig must be provided. This information may be included in the EToN Excavation Type Code that is provided for this purpose and supplemented in the description field if necessary.

### **7.18 Traffic Management, Parking and Traffic Regulation Orders**

The activity promoter must supply full details of the traffic management proposals, including any requirement for action by the local Permit Authority such as the need for Temporary Traffic Regulation Orders (TTROs) under s14(1) of the Road Traffic Regulation Act 1984 (RTRA) or (where the Council is prepared to do so) a Temporary Traffic Notice under s14(2) of RTRA, or the approval of portable traffic signals requests.

In the case of the suspension of a parking bay being required, the activity promoter should make an application to the Parking Manager.

Applicants should be aware that such applications may involve additional costs and activity promoters should familiarise themselves with the timescales and procedures relating to such applications.

Any requirement for action on the part of the Permit Authority, including but not limited to those listed below must be included within the application;

- the need to make TTROs ;
- notice to suspend parking restrictions; and
- to give approval for all portable traffic signals.

A PAA must specify that an application has been made to the relevant Authority for a TTRO where one is required.

The follow up Major Works PA must confirm that a TTRO has been made by that relevant Authority.

An associated traffic management plan for traffic sensitive streets must be provided with the application, together with the justification for use of 24-hour portable traffic signals. The costs associated with these are not within the scope of the permit fees and will be applied separately.

### **7.19 Public Transport**

If the proposed activities are likely to have an effect on public transport operators the promoters should have liaised with the operators to consider what measures could be taken to mitigate any adverse impact on public transport. The promoter should include information of such discussions and actions with their application. Where bus stops need to be closed or relocated then the existing application process should be followed, and evidence attached to the permit application.

### **7.20 Reinstatement Type**

A Permit application requires a promoter to provide their best estimate of the excavation depth as part of the application. This estimate may be expressed as a range, but should nonetheless provide a meaningful indication of the nature and extent of activity involved.

Permit applications must indicate whether the proposed activity is intended to be completed with interim or permanent reinstatement or a mixture of both.

Where the activity will be completed with a mixture of both interim and permanent reinstatement, the applicant must give details of where these methods will be used within the permit. These details can be provided in the form of text, either in the activity description or in the form of a comment.

Where the activity is completed with an interim reinstatement, a separate permit application will be required for the permanent reinstatement where this is to be undertaken outside the duration of the permit.

### **7.21 Inspection Units**

The activity promoter is required to indicate the provisional number of estimated inspection units appropriate to the activity in accordance with the rules laid down in the relevant Code of Practice for Inspections and its successors in the Street Works Inspection Fees (England) (2002) and any subsequent amendments to those regulations.

### **7.22 Application and Response Times**

The Permit Scheme sets down the application and response times for dealing with permit applications and permit variation applications electronically in the table below. In all cases given in the table, the time period is measured from the time of receipt of the application by the Permit

Authority. A “response” means a Permit Grant, Permit Refusal or a Permit Modification Request. In the case of either of the latter two options where there are reasons why the permit cannot be granted in the terms applied for, the response terms will explain the reasons to the applicant and if relevant what needs to be altered to make the application acceptable.

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

Without a prior telephone call, the minimum period to apply electronically for a permit variation (extension) before the permit expires is 2 days or 20% of the original duration.

### 7.23 Decision making

The Permit Authority when making a decision on an application will act reasonably and in accordance with the statutory duty to co-ordinate and manage the network and also in line with the objectives of the scheme.

When reaching a decision, the Permit Authority will consider all aspects of the proposed activity and other influences that may affect the traffic flow. These will include but will not be limited to;

- the network capacity;
- safety;
- the scope for collaborative working;
- the overall effect on the local and regional highway network;
- the local residents;
- appropriate technique and arrangements;
- working arrangements;
- environmental impacts; and
- public transport.

### 7.24 Approval of a Permit Application

If the Permit Authority is content with the proposal it will grant the permit within the timescales detailed in the table in 7.22. The permit will be granted based solely on the details provided in the application that is being granted including associated documentation, cross referenced sites and any conditions. The permit will be granted in accordance with the ETON technical Specification.



## 7.25 Modification of a Permit Application

If it is necessary to seek further clarification of the information contained in the application, then the Permit Authority will endeavour to resolve this within the mandatory response times so that the estimated start date and duration of the original application remains.

The Permit Authority will submit a Modification Request EToN notification to allow the activity promoter the opportunity to make amendments to their application and resubmit this within the required timeframe.

As long as the timeframes are met, the original start and end dates of the first application can be kept and no early start agreements are required.

If the matter cannot be resolved satisfactorily within the timeframes or the response period, then the Permit Authority will refuse the application.

If the Modification Application is not subsequently submitted within the required timeframes, then in accordance with regulation 16(3) of the regulations the Permit Authority will consider the application refused.

The EToN technical specification sets out the requirements and timelines in more detail.

## 7.26 Refusal of a Permit Application

The Permit Authority cannot refuse legitimate activities but reserves the right to refuse an application for a PAA or PA where it considers that any element of the permit application is not acceptable.

In these cases, the Permit Authority will clearly state the reasons for refusal within the required response times and if necessary the aspects which require modification.

A promoter may cancel the application at any point before the works has started by way of an EToN electronic works notice or if EToN is not being used the pre-agreed methodology. At any point up to the point until the permit has been granted no fee will be charged for the cancellation or withdrawal, however, if the permit has been granted prior to the cancellation or withdrawal the fee will be charged regardless.

There is no legal requirement that a promoter has to respond to a works comment; however it is strongly recommended that communications between both promoter and Permit Authority are maintained in these situations because the comments system cannot be used as a legal basis for assuming approval or refusal. This is because the timescales for permit responses remain valid and if agreement cannot be reached, the Permit Authority may have no option but to refuse a permit to avoid the potential for a deemed permit

Permit applications can be refused, but are not limited to the following reasons;

- **Overlapping activities** – Where other activities are due to take place in the same street or other streets affected by the proposed activity. In which case the Permit Authority may request the promoter to consider collaborative working as an alternative.
- **Timing and duration** – A promoter must ensure that when making an application that the proposed duration of the activity takes into account both the legitimate need to complete the

activity in an efficient and economic manner and the legitimate interest of other users of the highway.

- **Location** – This would only apply in relation to new apparatus and where disruption would be reduced by installing the apparatus in an alternative street and where it is reasonable to use the alternative street.

## **8 Issue of Permits**

### **8.1 Timing of Permit Issue**

Where the Permit Authority is content that all aspects of the permit application meet the criteria of the scheme, it will issue a permit within the response times detailed in 7.22.

### **8.2 Issue of Permit**

A permit will be issued electronically (and copied to Interested Parties) in accordance with the formats given in the Technical Specification for EToN, with the details placed on the permit register, the permit will reference in detail the activity it allows and its duration.

In case of an EToN system failure, and if the Permit Authority has been made aware of the system failure the Permit Authority will contact the activity promoter and agree an alternative method by which permit should be sent.

### **8.3 Inclusion of Conditions**

A permit granted notice will be issued to the activity promoter for every permit and will reference all of the conditions identified in the permit.

### **8.4 Permit unique reference number**

In accordance with Regulation 12 of the regulations and as allowed in the EToN technical specification each permit must have a unique reference number. For all permits it is a requirement that where there is any other linked permits, references to those other linked permits must be included with the permit.

A valid unique permit reference number shall be prominently displayed on the site information board in line with the conditions.

### **8.5 Amendment to the original application**

Where the Permit Authority requests further conditions are added to the permit, which effectively amends the details of the original application, the activity promoter shall amend and resubmit a revised application. There will be no charge for the variation if instigated by the Permit Authority. If the variation is instigated by the promoter variation charges will apply if the original preceding application has been granted.



## **8.6 Right of appeal**

The activity promoter has a right of appeal, in accordance with the dispute resolution process set down in the Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related matters - October 2012 and its successors. In these cases activities should not commence or it will be necessary for them to be stopped until the issues are resolved. In the cases of an immediate activity, stopping the activity is subject to safety and legal considerations.

## **8.7 Permit application Deemed to be approved**

If the Permit Authority fails to reply to an application for a permit or PAA within the designated response times, the permit or PAA is deemed to be granted in the terms of the latest version of the application. The proposed start and end dates, description, location, duration, traffic management, etc. will be included in the permit and associated conditions for the activity and will then be binding on the activity promoter in the same manner as if the permit had been granted within the timescale. Breaching the conditions applied will constitute an offence. In cases of deemed permits, no fee will be applicable.

## **9. Reviews, Variation and Revocation of Permits and Permit Conditions**

### **9.1 Permit Authority Powers**

Within the Permit Scheme, and in accordance with Regulation 15 of the regulations the Permit Authority has the power to review, vary or revoke permits and permit conditions on its own or at an activity promoter's initiative. However, the Permit Authority is under no obligation to let activities run beyond the permitted period and any activities which exceed the allowable duration will be subject to overrun charges under Section 74 of NRSWA.

### **9.2 Changes to a Provisional Advance Authorisation**

A PAA cannot be varied. Where a PAA has been given and a full permit has not been issued and the proposals change, the activity promoter must inform the Permit Authority immediately of the proposed changes and a revised application for a PAA should be made.

### **9.3 Avoidance of a Criminal Offence**

Permit variations should be sought as soon as changes are identified to avoid a criminal offence being committed by activities being undertaken without a permit or outside of the conditions associated with that permit.

### **9.4 Timing of Permit Variations**

Applications for permit variations may be made at any time after the permit has been issued and before or during the activity itself. Applications for variations must not be made after the end date has passed (no variation for an extension after the end date is allowed).

## 9.5 Electronic Application for a Variation

Where the existing permit has more than 20% of its duration or more than two activity days to run, whichever is the longer, the activity promoter shall apply for a variation electronically.

## 9.6 Telephone Application for a Variation

Where the criteria in 9.5 are not met, the activity promoter shall first telephone the Permit Authority to ascertain whether the Permit Authority is prepared to grant a variation and only then apply, again electronically, if the Permit Authority has agreed quoting the agreement reference.

## 9.7 Systems Failure

In the event of a system failure, activity promoters shall adopt the EToN Technical Specification procedure. FPN's, Section 74 charges and any other penalties that result due to system failures will be waived. However, activity promoters must inform the Permit Authority about system failures immediately and get an agreement in principle to avoid the creation of FPNs and Section 74 charges in advance.

## 9.8 Variations for Immediate Activities

In the event of immediate activities requiring a series of fault-finding excavations or openings, the following procedure shall apply where it is necessary to undertake activities beyond the initial excavation or opening that was indicated in the first permit application. For immediate activities, the activity promoter will submit the first permit application within two hours of starting the activity. That first permit application will contain the location of the initial excavation or opening.

- For any further excavations or openings on the **same** street within 50 metres of the original excavation or opening, the activity promoter will telephone the Permit Authority with the new location. No permit variation will be needed and no variation charge will apply.
- the activity promoter will telephone the Permit Authority to apply for a permit variation for the first excavation in each subsequent 50 metre band away from the original excavation or opening in the same street, i.e. 50-100 metres, 100-150 metres, etc. Standard permit variation charges will apply.
- if the search carries into a different street or a new USRN (including if the street changes to a different street/Permit Authority), then a new and separate permit application will be required.
- if the activity promoter cannot contact the Permit Authority by telephone, it should record the fact and send the message electronically by means of a comment. Conditions for these activities may be varied to take into account the fact that a new location, even within the permitted bands, may be more disruptive.

## 9.9 Information required for Permit Variation application

Applications for permit variations must contain the following information as applicable to the variation application, although not limited to;

- the revised timescale;
- any change to the description of the activity;
- a revised illustration;
- any change to the method of excavation;
- any variation to the depth of the excavation;
- any changes to the reinstatement method;
- any changes to the conditions, if applicable;
- any changes to the Traffic Management; and
- any change to the actual location of the excavation from that stated on the original application.

#### **9.10 Review of Permit by Permit Authority due to circumstances beyond its control**

The Permit Authority may review the permit and associated conditions in the event of circumstances beyond its control having a significant disruptive effect at the location of the activity. The Permit Authority's policy regarding the circumstances in which it will review, vary or revoke permits on its own initiative is given in Appendix B.

No fee will apply for permit variations initiated by the Permit Authority unless, at the same time, the activity promoter applies for permit variations which are not the result of the circumstances causing the Permit Authority's action.

#### **9.11 Review of Permit due to non-compliance by the Activity Promoter**

If the Permit Authority considers that an activity promoter is failing to comply with the conditions of a permit, then it may issue an FPN or revoke the permit. Before revoking a permit, the Permit Authority will contact the activity promoter to inform them of its intention and discuss situation in the first instance.

#### **9.12 Waiving of Fees**

If the Permit Authority has to revoke a permit through no fault of the activity promoter, no fee will be chargeable for a new permit.

#### **9.13 Revocation**

The Permit Authority can revoke a permit at its own initiative. It has the power to do so under Regulation 10(4) of the regulations where there has been a breach of a condition (which is also a criminal offence). In such a circumstance the Permit Authority may use the provisions replacing Section 66 of NRSWA to clear the street if required, namely under Regulation 18 of the regulations. The Authority's policy for revocation is written in Appendix B accordance with Regulation 15(3) of the regulations but it should be noted herein that the Permit Authority will revoke a permit on its own initiative if;

- as with variations, where the circumstances arise which cause the Authority to have to review the permit they concluded that the permit needs to be revoked rather than simply varied; and

- revocation will be exceptional and will only happen when the circumstances could not have been reasonably predicted or where the impact is significant.

No charge will be raised for the revocation if made at the Permit Authority's own initiative. If because of the revocation a promoter must apply for a new permit there would be no fee for the new permit except where the permit is revoked as a consequence of any action or omission on the part of the promoter.

Revocation will be used as an alternative to criminal action where it is reasonable considering the nature of the breach and where it is proportionate.

Where the promoter disagrees with the Permit Authority decision in any of the above, the promoter has the option of invoking the dispute resolution procedure as detailed in Section 15.

#### **9.14 Continuation of an Activity when a Permit has been revoked**

An activity promoter will be committing an offence if it continues an activity when a permit has been revoked.

### **10. Cancellation of a Permit**

#### **10.1 Cancellation Process**

There is no mechanism for suspending or postponing a permit should the activity need to occur at a later date once a permit has already been granted. In these circumstances a permit will require cancelling and re-applying and permit fees will apply for the new permit.

If an activity promoter wishes to cancel a permit for which it has no further use, or withdraw a permit application that has been submitted, for which a permit has not yet been granted, it should use the cancellation process containing the relevant activity/works reference – see EToN Technical Specification.

No fee is payable for cancellations unless the permit has already been granted in which case the fee will be chargeable. See Section 12.5 for circumstances where fee reductions apply.

#### **10.2 Continuing an Activity following cancellation of a Permit**

An activity promoter will be committing an offence if it continues an activity when a permit has been cancelled.

### **11 Permit Conditions**

#### **11.1 Condition classes**

The Permit Scheme will use the national standardised conditions as updated and agreed in the Statutory Guidance for Highway Authority Permit Schemes – Permit Scheme Conditions March 2015. In deciding which conditions should be applied the Permit Authority will consider the

proposed activity's potential to cause disruption. Where possible, conditions attached to a permit will provide flexibility for the promoter by requiring an outcome rather than stipulating the method by which the work must be carried out.

## **11.2 Breaching of Conditions**

If the Permit Authority considers that an activity promoter is failing to comply with the conditions of a permit, then it may revoke the permit. Before revoking a permit, the Permit Authority will contact the activity promoter to warn them of its intention and allow the situation to be discussed.

Where it appears to the Permit Authority that a condition has been breached and that the activity promoter or a person contracted to act on its behalf has therefore committed an offence, it will take action as described in Section 17.

## **11.3 Avoidance of conflict with other legislation**

The Permit Authority will endeavour to ensure that any conditions applied to a permit do not conflict with the activity promoter's obligations under separate legislation. The activity promoter should bring such conflicts to the attention of the Permit Authority, who will then be responsible for resolving the issue with the other body and amending the permit conditions accordingly. If the activity promoter has safety concerns about conditions set by the Permit Authority, it should raise these concerns with the Permit Authority and, if necessary, challenge the permit condition

All parties should promote safe working practices and act reasonably and responsibly.

## **11.4 Permit Authority Imposed Conditions**

The Permit Authority will only use the national conditions however, the Permit Authority may request that further conditions are applied prior to granting the permit. The impositions of such conditions will be in full consultation with the promoter of the activity and they will be included in the modified application and the subsequent permit.

The Permit Authority may also vary the conditions on a permit after it has been granted as an Authority imposed variation. There will be no fee for these variations as set out in Section 12.4.

## **11.5 Imposing Conditions upon Highway Authority Works Permits**

The Highway Authority will be subject to the same conditions in the same form and for the same reasons in respect of its own works.

# **12 Fees**

## **12.1 Permit Authority's power to charge Fees**

To meet the costs of introducing and operating the Permit Scheme, Regulation 30 of the regulations gives the Permit Authority the power to charge a fee in respect of the following;

- the application for a PAA;

- the granting of a permit;
- each occasion where there is a permit variation or the conditions attached; and
- where a permit variation would move an activity into a higher permit category, the activity promoter will be required to pay the difference between the permit categories as well as the permit variation fee.

The current level of permit fees, including variations, reflect the cost of running the current noticing system. Permit fees do not include costs charged or recoverable in relation to other consents or other requirements such as for TTRO's or parking suspensions etc.

Fees are payable by statutory undertakers but not the Highway Authority. This is due simply to the fact that monies would circulate around the Highway Authority. However, to promote good practice the Permit Authority will use a shadow charging arrangement to show the cost of issuing permits to its own promoters both to help understand its own costs and to set alongside the costs to other promoters.

## 12.2 Allowable Costs and Fees

The income shall not exceed the total allowable costs prescribed in the Regulations. The allowable costs of the complete scheme and its overall income have to be balanced. This balance can be achieved over several years.

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

This includes the cost of dealing with activities which required a permit but for which no permit was sought and proposed activities which would be subject to a permit, but which do not lead to an application.

Overheads can include but are not limited to;

- Non-salary staff related costs such as pensions and benefits;
- Appropriate accommodation costs;
- Central services costs;
- An appropriate share of IT costs (software and hardware);
- General administration and management;
- Monitoring the permit system and KPI production; and
- Invoicing and debt recovery.

## 12.3 Fee Policy

The Permit Authority will charge undertakers for the actions set out in 12.1 and in accordance with 12.2.

## 12.4 Where Fees will not be chargeable

Fees will not be payable in the following circumstances;



- **Cancellation of a permit** – prior to the Permit Authority’s granting, a promoter cancels the permit;
- **Refusal of permit or variation** – where an application for a permit or variation is refused;
- **Revocation of permit** – Where a permit is revoked on the Permit Authority’s own initiative and the promoter had to apply for a new permit there will be no fee for the new permit except where the original permit is revoked because of any action or omission on the part of the promoter;
- **Authority imposed variation** – For permit variations initiated by the Permit Authority, unless at the same time promoter seeks variations which are not the result of the circumstances causing the Permit Authority’s action (in which case the fee would be payable); and
- **Deemed permit** – Where the Permit Authority fails to respond to application for a permit within the relevant timescales and the permit is subsequently deemed to be granted.

## 12.5 Circumstances where fees may be reduced

Where Newcastle City Council is satisfied that applications for two or more permits (including PAAs);

- are submitted at the same time, beginning with the day on which the first permit application is received; and
- are the result of the applicant or applicants working together to produce the least impact for users of the its streets.

There will be a reduction of 30% from the permit or PAA fee. All applications, including the first to be received, must indicate that they are being submitted together (within 3 days).

Where the Highway Authority Promoter is collaborating with Statutory Undertakers, those Undertakers will be eligible for the discount.

Where works are undertaken wholly outside of traffic sensitive times on Traffic Sensitive Streets the Permit Authority may reduce the fee.

A discount may be applied where it is demonstrated that an activity provides significant economic benefit to the local authority or Council. These will be agreed on an ad-hoc basis

## 12.6 Option to Waive or Reduce Fees

The Permit Authority retains the option to waive or reduce fees at its discretion in other certain circumstances.

## 12.7 Review of Fees

The Permit Authority will review its level of fees annually to ensure that the overall fee income does not exceed the allowable costs. In the event of a surplus in a given year, the fee income will be applied towards the cost of the Permit Scheme in the next year and the fee levels adjusted accordingly. However the fees should be showing not to be covering the allowable costs a review of the schemes prescribed costs will be carried out and a fee review undertaken in line with the appropriate legislative pathway of the time.

The outcome of the annual fee reviews will be published and open to public scrutiny.

## 12.8 Approved Level of Fees

The current approved level of fees is appended to this scheme. The fees have been approved by Newcastle City Council.

## 13. Registers

Part 7 of the Regulations and statutory guidance (Registers and record keeping related to a permit scheme) requires that the permit authority must maintain a register of each street covered by their scheme containing information with respect to all registerable activities on those streets. (Permit Authorities still need to run a street works register required under s53 of NRSWA for any private streets and for any publicly maintained streets that are not included in the permit scheme).

Permit management systems will receive applications electronically and this enables an authority to manage them together with other relevant information. Requirements for NRSWA registers are contained in the Code of Practice for Coordination of Street Works and Works for Road Purposes and Related Matters and its successors. In the interests of consistency, Permit Authorities should ensure that all information held in permit registers is referenced to the Unique Street Reference Number (USRN) and be GIS (Geographic Information System) based. Permit Authorities should follow the requirements in the latest Technical Specification.

This permit scheme will comply with all requirements of the above regulations and associated Statutory Guidance and its successors.

## 14. Monitoring

### 14.1 Monitoring and Evaluating the Permit Scheme

The Permit Scheme will be evaluated after each of the first 3 years, then 3-yearly after that. Evaluations must be made available within 3 months of the yearly date on which the Permit Scheme came in to effect. The evaluation shall include consideration of;

- Whether the fee structure needs to be changed considering any surplus or deficit;
- The costs and benefits (whether financial) of operating the scheme; and
- Whether the Permit Scheme is meeting key performance indicators where these are set out in the Guidance.

The outcome of each evaluation shall be made available to the persons referred to in Regulation 3(1) of the regulations within three months of the relevant anniversary.

Evaluation reports shall include measurement of success against the key objectives of this Permit Scheme and will follow the latest published in line with the Statutory Guidance for Highway Authority Permit Schemes. Such guidance and templates may change from time to time. Such a report may include the use of the following;

- HAUC TPI (TMA Performance Indicators) measures as defined and agreed by the National Permit Forum which may be subject to change from time to time; and



- Authority measures which will include further data collated by the Permit Authority to support the objectives of this scheme. Such measures will be defined and agreed by the National Permit Forum and as above, may be subject to change from time to time.

## 14.2 Use of Key Performance Indicators (KPI)

Every authority wishing to implement a permit scheme must indicate how they intend to demonstrate parity of treatment for promoters in its application. The DfT's Guidance for the development of permit schemes contains seven key performance indicators, which may be used for this purpose. These KPIs may be amended, removed or replaced by future amendments to Permit Regulations. The scheme will always follow the latest KPI requirements.

These KPIs apply to both road works and street works. KPI results will be produced on a monthly basis. Such KPIs may be redeveloped by the DfT and/or HAUC (England) and statutory guidance may be subject to change from time to time.

The Permit Authority will remain committed to submitting the performance scorecard data to the DfT or any organisation nominated on a quarterly basis.

## 14.3 Presentation of KPIs

The KPIs will be discussed at the regular activity promoter meetings as appropriate. In addition, the KPIs will be made available to any other person on request or the Authority may wish to publish them on their website. If any promoter considers that they are not being treated in accordance with Regulation 40 of the regulations then they can take the matter up either through the regular promoter meetings or the dispute resolution procedures highlighted in Section 15.

## 15. Disputes

### 15.1 Disputes

The TMA provides wide ranging powers to devise a reasonable and suitable dispute resolution procedure and to identify the stages at which it can be invoked. Yet there are no prescribed procedures set out in statute for Permit Schemes. Therefore, it is felt prudent to build on and use the arrangements already established in HAUC(UK) and at local and national level.

The Permit Authority and the promoters are expected to use their best endeavours to resolve disputes without the need for formal appeals using existing escalation processes through individual management structures. However, it is recognised that this may not always be possible. If agreements cannot be reached on any matter arising under the terms of the Permit Scheme the dispute will be referred for review on the following basis:

- Straightforward issues

Where the two parties consider that the issues involved in the dispute are relatively straightforward and can be referred to impartial members of the regional HAUC (that is those not representing the parties directly involved) for review. That should take place within 5 working days of the referral. It is recommended that the result is accepted as binding

- Complex issues

If the parties think the issues are particularly complex, they should ask HAUC(England) to set up a review panel of four members comprising of two statutory undertakers and two Permit Authority representatives, one of which will be appointed chair by the HAUC(England) joint chairs.

Each party will make all the relevant financial, technical and other information available to the review panel. The review should take place within 10 working days of the date on which the issue is referred to HAUC(England) and it is recommended that both parties accept the advice given by the review panel.

## **15.2 Adjudication**

If an agreement cannot be reached and/or if one of the parties does not accept the ruling given as binding, then the dispute will be referred to independent adjudication on the proviso that the parties agree that the decision of the adjudicator is deemed to be final.

The costs of the adjudication will be borne equally unless the adjudicator considers that one party has presented a frivolous case, in which case costs may be awarded against them. Where this route is followed, the parties should apply to the joint chairs of HAUC (England) who will select and appoint the independent adjudicator from a suitable recognised professional body.

If the parties do not agree that the decision of the adjudicator is deemed to be final the promoter will have the option of challenging the Permit Authority's decision through the administrative court by way of judicial review.

## **15.3 Arbitration**

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

- Section 58 (7A) – restriction on works following substantial road works;
- Section 58A – restriction on works following substantial street works;
- Section 61 (6) - consent to placing apparatus in protected streets;
- Section 62 (5) - directions relating to protected streets;
- Section 74 (2) - charges for occupation of the highway where works are unreasonably prolonged;
- Section 74A (12) - charges determined by reference to duration of works;
- Section 84 (3) - apparatus affected by major works; and
- Section 96 (3) - recovery of costs or expenses.

## **16. Related Matters and Procedures**

### **16.1 Permit Authority Contact Details**

The Permit Authority will publish their contact details, including out-of-working-hours, to their website and the NSG concessionaire's website via the operational data batch file.

## 16.2 Traffic Restrictions and Road Closures

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

- Where necessary or expedient action is needed the relevant Permit Authority may issue a Temporary Traffic Regulation Notice under section 14(2) of the Road Traffic Regulation Act 1984, imposing a short-term closure or restriction. Prior notice is not necessary. The notice is limited to 21 calendar days if there is a danger to the public or risk of serious damage to the road, independent of street works, a leaking gas main, for example. It can be extended by one further notice. The notice is limited to 5 calendar days if there is no risk of danger or damage
- In less urgent cases the Permit Authority may make a ‘temporary order’ under s14(1) of the Road Traffic Regulations Act 1984 which may remain in force for up to 18 months. This is limited to six months for footpaths, bridleways, cycle tracks and byways open to all traffic.

A temporary notice and a temporary order may provide that restrictions have effect only when traffic signs are lawfully in place. This will help limit traffic disruption where activities progress along a length of road. In other extraordinary circumstances, the Road Traffic Regulation Act (1984), allows the police to suspend designated street parking places temporarily to prevent or mitigate traffic disruption, or danger to traffic.

## 16.3 Temporary Notices

This procedure will normally only apply to immediate activities. The Promoter will inform the relevant Permit Authority as soon as practicable if a closure or traffic restriction is needed. The Permit Authority will consult with the police and all relevant parties, and confirm, as soon as possible, whether or not a notice will be made.

The Permit Authority will state in the notice;

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

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

## 16.4 Temporary Orders

A temporary traffic order is generally needed for planned activities in the street (except where the order follows a closure notice). If a closure order is needed, the Promoter should notify the Permit Authority at least three months in advance. This will allow the Authority time to consult, and to obtain approvals and advertise the order.

Activities that require a temporary traffic order are automatically classed as major works and require at least three months’ notice for applying for a PAA, initially, and a temporary traffic order.

The Promoter is required to submit all the information needed to justify a road closure together with the application for an order.

## **16.5 Working near Rail Tracks**

Particular attention must be given to the possible effects of activities taking place at or in the vicinity of the railway. Promoters planning activities in such locations must refer to the advice of the Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related matters and its successors, or as subsequently amended, which sets out Network Rail's requirements.

## **16.6 Vehicle parking at Street works and Road works**

### **16.6.1 Vehicle within Activity Site**

A works vehicle may be parked in an activity site provided that it is necessary for the carrying out of that activity. Basic site layouts are shown in the Code of Practice on Safety at Street Works and Road Works.

A vehicle entirely within the coned-off area of the site may require a larger coned-off area than would otherwise be the case and should be considered within the permit application and associated conditions.

### **16.6.2 Vehicle located outside Activity Site**

A vehicle parked outside an activity site has no special status and no exemption from parking enforcement.

### **16.6.3 Implications**

When assessing the impact of activities, the parking of any vehicles associated with the activity must be considered. This is a problem for activities which, but for the presence of a works vehicle, would take place entirely within the footway. If a vehicle is parked adjacent to the activity, in a place where vehicles could not normally use, then it must be part of the activity site. It must be signed and guarded appropriately therefore the activity is then not wholly confined to the footway but encroaches onto the carriageway. Applications for permits must reflect this.

### **16.6.4 Parking Restrictions**

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

It will be a condition of a permit where parking restrictions or suspension is required that the necessary order or approval will be in place before the activity, or the relevant part of the activity, starts on site.

## 16.7 Storage of materials

Promoters must take care to place materials so that they do not cause an obstruction to road users. The location of any storage outside of the designated working space must be with the advance agreement of the Permit Authority. These storage areas may require either a separate licence under Section 171 of the Highways Act 1980 or a separate permit or both and must be agreed between the two parties in advance.

## 16.8 Apparatus belonging to others

There may be other apparatus where activities are planned and under Section 69 of NRSWA, those carrying out activities must ensure that the owners of that apparatus are able to monitor the activity and they are afforded all reasonable requirements to protect the apparatus. Failure to do so constitutes a criminal offence.

## 16.9 Environmental Issues

Where works are planned near any conservation areas, culverts, water courses, trees with preservation orders, basements, bridges, monuments or any other location where environmental factors may be of concern, Promoters must liaise with the Authority's relevant departments to ensure that environmental officials along with any necessary Authority officers are notified when drawing up their proposals.

## 16.10 Section 58 & 58a Restrictions

Details of Section 58 and 58A restrictions will be provided as required under Chapter 6 of the NRSWA Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters which may change from time to time.

### 16.10.1 Activities during a Restriction

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

### 16.10.2 Exempt Activities and Reduced Restrictions

Activities which are exempt or subject to reduced restrictions are;

- minor activities that do not involve breaking up or excavating in the highway;
- immediate activities;
- customer connections, subject to Section 16.10.3 below;
- work to comply with either an improvement notice or prohibition notice issued by the Health and Safety Executive under Section s 21 or 22 of the Health and Safety at Work Act 1974;

- works carried out under regulation 16(3) (b) of the Gas Safety (Installation and Use) Regulations 1998;
- works carried out to comply with approved programme permitted under Regulation 13A of the Gas Pipelines Safety Regulations 1996 (SI1996/825, as amended by SI2003/2563) that could not have been identified before the restriction began; and
- activities required exposing equipment covers and manhole covers buried during the Substantial Street or road works.

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

### 16.10.3 Customer Connections

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

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

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

There may be circumstances where activities that are not covered by the exemptions are required to be carried out during a period of restriction. The relevant Permit Authority will consider each application on its own merits. If the Promoter had been informed of the pending restriction when it was first notified but not applied to carry out its activities at the time, then Regulation 14 of the Regulations allow this to be considered by the relevant Permit Authority in deciding whether or not to grant a Permit during a restriction. In the Permit Scheme, there will be a presumption against granting a Permit in such circumstances unless there are overwhelming counter arguments.

### 16.10.4 Permit Applications during Restrictions

The Permit application that a Promoter must give for an activity that they wish to carry out during the period of a restriction imposed under Section 58 or Section 58a of NRSWA depends upon whether;

- a) the activity comes within the scope of any of the specific exemptions; or
- b) the relevant Permit Authority's consent is required.

In (a), the ordinary rules appropriate to the activity concerned must be followed

In (b), an application for consent should be made, specifying, in addition to the normal activity information, the grounds upon which consent is sought.



Once consent is granted, an application for a permit must be made in the usual way. The relevant Permit Authority will then deal with this, again in the usual way. If the relevant Permit Authority refuses consent, then the Promoter may appeal if it considers this to be unreasonable.

A restriction under Section 58 or Section 58a cannot be made if substantial activities have started, based on an already issued Permit, without a notice under Section 58 or Section 58A having been given.

If a street in which a Promoter proposes to carry out activities has been newly constructed, recently reconstructed or resurfaced, even if the Promoter is not aware of a restriction, the Promoter is strongly recommended to approach the Permit Authority to establish whether a restriction is in force. Promoters should not assume that they can automatically break open that street but should check with the Permit Authority. It may be that a Promoter was not sent the relevant notice under Section 58 or Section 58a and there may be a restriction in force.

If having received an application for a PAA or PA, the Permit Authority, or the relevant Permit Authority realises that there is a restriction in place, they will advise the activity Promoter of this fact as soon as possible.

Disagreements that cannot be resolved between the Promoter and the relevant Permit Authority will be resolved by means of the dispute resolution procedures. Details of these procedures can be found in Section 15 of this document.

Restrictions may be revoked by the relevant Street Authority at any time. The relevant Street Authority will do this by sending a cancellation notice to the Promoter(s) concerned, informing them that the original restrictions are now revoked. In cancelling restrictions, the relevant Authority will give the same consideration to the situation as when issuing the original restrictions and include the reasons for the revocation.

## **17. Sanctions**

### **17.1 Permit Authority's Policy**

Appendix C sets down the Permit Authority's policy of how it will employ sanctions and this policy should be read in conjunction with this section together with current NRSWA legislation and the Code of Practice.

### **17.2 Undertaking Activities without a Permit**

Regulation 19 of the regulations states that it is a criminal offence for a statutory undertaker or a person contracted to act on its behalf to undertake specified activities in a specified street in the absence of a permit, except as set down in Section 3.4 above.

This permit offence applies only to statutory undertakers and not the Highway Authority, however, the Permit Authority will monitor the performance of the Highway Authority promoters to ensure a consistent approach and it will be a matter of public record if a Highway Authority acts in such a way that would amount to the commission of an offence under Regulations 19 of the regulations.

Any person found guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.



### 17.3 Breaching a Permit Condition

Regulation 20 of the regulations provides that it is a criminal offence for a statutory undertaker or a person contracted to act on its behalf to breach a permit condition.

Any person found guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Any statutory undertaker not working within the terms and content of an issued permit (either granted or deemed) will be seen as undertaking work in breach of permit conditions. It is the promoter's responsibility to ensure the content of the permit accurately reflects the proposed or ongoing activity.

### 17.4 Action by Permit Authority

If the Permit Authority considers that an activity promoter is undertaking activities which are outside the scope of an issued permit, then it may revoke the permit. Before revoking a permit, the Permit Authority will contact the activity promoter to inform them of its intention and initiate a verbal discussion followed by electronic communication.

Where a statutory undertaker or a person contracted to act on its behalf undertakes an activity without a permit, where a permit is required, or breaches a permit condition, the Permit Authority may take one or more of the following actions depending on the seriousness and persistence of the offence(s);

- serve a notice requiring the statutory undertaker to take such reasonable steps as detailed in the notice to remedy the situation within a specified timescale;
- where a statutory undertaker fails to comply with the requirements of such a notice within the timescale, the Permit Authority may undertake the specified steps and recover the costs that are reasonably incurred, from the statutory undertaker;
- issue a Fixed Penalty Notice (FPN) against the statutory undertaker; and
- prosecute the statutory undertaker.

### 17.5 Fixed Penalty Notices

Regulations 21 to 28 of the regulations (and Schedules 1 and 2) authorise permit authorities to issue Fixed Penalty Notices (FPNs) in respect of criminal offences. FPN's offer the offender an opportunity to discharge liability for an offence by paying a penalty amount.

A FPN may not be given more than 91 calendar days after the offence, beginning with the day on which the offence is committed. This is the maximum period allowed, although to improve co-ordination the Permit Authority will, once it is decided that a FPN is to be served, do so as soon as possible. The penalty amount is £500 for carrying out an activity without a permit, although a discounted amount is £300 if payment is received within 29 calendar days. For carrying out an activity in breach of a permit condition, the penalty is £120 and the discounted amount is £80 if payment is received within 29 calendar days, FPNs MUST be in the form set out in Schedule 1 to the Regulations .

A FPN shall identify the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence. It must also state;

- the amount of the penalty and the period within which it may be paid;
- the discounted amount payable in accordance with Regulation 25 of the regulations and the period within which it may be paid;
- the person to whom and the address at which payment may be made;
- the method or methods by which payment may be made;
- the person to whom and the address at which any representations relating to the notice may be addressed; and
- the consequences of not making a payment within the period for payment.

The person specified above shall be the Permit Authority or a person contracted to act on its behalf. FPNs will be served electronically where possible, but other means of giving the fixed penalty notice are permitted.

If an undertaker wishes to receive FPNs by electronic means, it must tell the Permit Authority which method (e.g. EToN, email or fax) and provide details of the EToN web service URL, email address or fax number to be used as appropriate. Where an address for service using a particular method for transmitting an electronic communication has been served for receipt of FPNs and the Permit Authority has not been notified that the address is withdrawn, then a FPN must be served by sending to that electronic address.

In all other circumstances, including system failures or if the Permit Authority has tried and failed to use electronic means, the fixed penalty may be served by alternative methods such as;

- delivering it to the person to whom it is to be served;
- leaving it at the proper address;
- sending it by first class post to their address; and
- by any other agreed means.

Section 98 (2) of NRSWA provides that a notice served after 16:30 on a working day is deemed to have been served on the next working day. The Technical Specification for EToN includes a non-mandatory message type for sending a FPN using EToN.

## **17.6 Withdrawal of an FPN**

In accordance with Regulation 27 of the regulations, if the Permit Authority considers that a FPN which has been given ought not to have been given, it shall give to the person to whom that notice was given, a notice withdrawing the FPN. The notice shall be in the form set out in Schedule 2 of the Regulations. The Permit Authority in such circumstances will repay any amount which has been paid by way of a penalty in pursuance of the Fixed Penalty Notice. The Permit Authority shall consider any representations made by or on behalf of the recipient of a Fixed Penalty Notice and decide in all the circumstances whether to withdraw the notice.

## **17.7 Non Payment of an FPN**

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. 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.

Legal action must be taken before the expiry of the six months deadline from the date of the offence for bringing a case before the Magistrates' Court (Section 127 of The Magistrates' Courts Act 1980). This is the case even if the FPN was not given for some time after the offence was committed. In circumstances where a Fixed Penalty Notice has been issued in relation to an offence, although the Permit Authority subsequently forms the view that it would be more appropriate to prosecute the offender, the Permit Authority must withdraw the notice under Regulation 27 of the regulations before bringing the proceedings.

## **17.8 Section 74 of NRSWA**

Section 74 of NRSWA enables the Permit Authority to operate an over-run charging scheme alongside the Permit Scheme.

The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) (Amendment) Regulations 2012 (s74 Regulations) and its successors will apply but may be subject to change from time to time in which case the amended or replacement Regulations will apply.

The operation of the overstaying regime, however, is modified under the Permit Scheme to incorporate the process of setting and modifying the duration of the activity (or "works" in Section 74 terms) through the permit application, approval and variation processes.

Activities carried out by a Promoter on behalf of a highway Authority or by the highway Authority themselves are not subject to Section 74 overrun charges. However, under the Permit Scheme, Promoters of such activities will be required to follow the same procedures as Promoters who are Statutory Undertakers.

### **17.8.1 Charges**

The level of charge is set in the Section 74 regulations and any other regulations or Codes of Practice that apply at the time of the charge.

The Permit Authority will always endeavour to ensure the facts used for proposing charges are accurate and in line with the regulations at the time.

The burden of proof is with the works promoter to prove that a physical overstay has not occurred in all circumstances where a promoter believes incorrect dates have been submitted. In these circumstances the Permit Authority reserves the right to consider whether an FPN offence has been committed. If no evidence can be provided, then a Section 74 charge will be applied in all circumstances.

Overruns on remedial works will be charged at the same rates appropriate in Section 74 regulations.

## **17.9 Application of Money by the Permit Authority**

The Permit Authority recognises that the FPN scheme is NOT intended to be an additional source of income for authorities, although some income may be generated incidentally. The objective of the FPN scheme is to enable permit authorities to manage and control activities better on the street and thereby contribute to the overall aim of the TMA, which is to minimise disruption from street activities, and will be operated with that in mind, the Permit Authority should therefore not expect any net proceeds emerging from this Permit Scheme. They shall, however, apply any net proceeds from the costs of operating the FPN scheme to promoting and encouraging safe, integrated, efficient and economic transport facilities and services, to, from and within its area.

#### **17.10 Regulation 18 – Discretionary Unauthorised Works Notices**

Under Regulation 18 of the regulations, the Permit Authority may instead of proceeding by way of a criminal sanction use this power to issue a notice where a person or persons who has undertaken works without a permit for which a permit is required to have been obtained or breached a permit condition. This power will only be used where it is an appropriate response in the circumstances and not as a matter of course.

Where such a notice is issued it will require the persons to take such reasonable steps as specified in the notice to remove the works, to remedy the breach or to minimise or discontinue any obstruction to the street connected with the works and to propose remedial action which must be undertaken within the timeframe set in the notice.

#### **17.11 Other NRSWA Offences**

Any offences relating to other sections of NRSWA which run in parallel to Permit Schemes will continue to apply. These include but are not limited to offences relating to reinstatement, overrunning and failure to send appropriate notices.

### **18. Permit Fee Payment**

#### **18.1 Payment options**

All promoters except those on behalf of the Highway Authority will be required to pay fees for permits and may have to pay a penalty if they receive a Fixed Penalty Notice for a permit related offence.

Permit Fees and FPN penalties will be kept as separate accounts;

Payment is to be paid electronically using Bankers Automated Clearing Services (BACS). The Promoter must support the payment with details of the Permit/FPN reference covered by the payment and the amount paid

The Promoter must set up payment facilities, provide contact details and agree method of payments with the Permit Authority Finance Department PRIOR to requesting Permits.

#### **18.2 Permit Fee payment and reconciliation**

There is no legislative process regarding reconciliation and invoicing arrangements and promoters do differ therefore some flexibility must be provided.

The Permit Authority will confirm the frequency, reconciliation model and invoicing process with the promoters prior to go-live.

The Permit Authority will submit a draft invoice to the promoters for a specified period prior to the generation of an invoice to enable them to reconcile the charges. A two-week timescale will be allowed for reconciliation of the charges prior to actual invoice.

Invoices will be submitted to the promoters if;

- no challenge is received within the 2-week maximum timescale allowed; and
- all charges are agreed.

Should a challenge be received the charges will be reviewed and any amendments made by agreement with the promoter.

The Permit fee invoice overview process is document below;

- invoices will be submitted monthly in arrears;
- payment terms will be as per the invoice; and
- non-payment of the invoice will be as per the Permit Authority's standard non-payment of invoices chase path procedures.

## **19. Transitional Arrangements and Estimated start date**

### **19.1 Transitional Arrangements**

The basic rules of transition will apply on all roads where the Permit Scheme operates;

- the Permit Scheme as provided for herein will apply to all activities where the administrative processes, such as an application for a permit or a PAA start after the commencement date;
- activities which are planned to start on site more than one month after the changeover date, for standard, minor and immediate activities, or three months after for Major activities must operate under the Permit Scheme. This means that even if the relevant section 54 or 55 NRSWA has been sent before the change-over date, the promoter must cancel the NRSWA notice for that activity, or phase and apply for a permit;
- if the promoter has not substantially begun the activity, or phase, by the time limit for the notice (1 or 3 month as appropriate) the promoter must cancel the NRSWA notice for that activity, or phase and apply for a permit; and
- any other activities which started under the notices regime and which start on site less than the time limit after the change-over date (according to the category) will continue under NRSWA until completion.

Given the advance notice there should be few activities where the rules will create difficulties but in the event, promoters should contact the Permit Authority so that a practical way of dealing with the activities can be resolved,

Following the Order giving effect to the scheme the Permit Authority shall provide to those parties referred to in Regulation 3(1) of the regulations not less than 4 weeks notification before the date on which the scheme will commence as specified in Regulation 17(1) of the regulations.

## **19.2 Estimated start date**

Estimated go-live is February 2020.

For consultation

## Appendix A

### Glossary of terms used in the operation of permit schemes

Term	Explanation
Apparatus	As defined in section 105(1) of NRSWA "apparatus includes any structure for the lodging therein of apparatus or for gaining access to apparatus"
Bank Holiday	As defined in section 98(3) of NRSWA, "bank holiday means a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the locality in which the street in question is situated"
Breaking up (the street)	Any disturbance to the surface of the street (other than opening the street)
Carriageway	As defined in section 329 of HA 1980, "carriageway means a way constituting or comprised in a highway, being a way (other than a cycle track) over which the public have a right of way for the passage of vehicles"
DfT	Department for Transport
Emergency Works	As defined in section 52 of NRSWA, "emergency works means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent (or which the person responsible for the works believes on reasonable grounds to be existing or imminent) which are likely to cause danger to persons or property"
Fixed Penalty Notice	As defined in schedule 4B to NRSWA, "fixed penalty notice means a notice offering a person the opportunity of discharging any liability to conviction for a fixed penalty offence by payment of a penalty"
Footway	As defined in section 329 of the HA 1980, "footway means a way Comprised in a highway which also comprises a carriageway, being a way over which the public have a right of way on foot only"
HAUC	The Highway Authorities and Utilities Committee
HAUC (England)	The Highway Authorities and Utilities Committee for England
Highway	As defined in section 328 of the HA 1980, "highway means the whole or part of a highway other than a ferry or waterway"
Highway Authority	As defined in sections 1 and 329 of the HA 1980
Highway Works	"works for road purposes" or "major highway works"
Immediate Activities	Immediate activities are either emergency works as defined in section 52 of NRSWA or urgent works as defined in The Street Works (Registers, Notices, Directions And Designations) (England) Regulations 2007
JAG (UK)	Joint Authorities Group (UK)
Local Authority	As defined in section 270(1) of the Local Government Act 1972(a) and includes the Common Council of the City of London.
Local highway authority	As defined in section 329 of HA 1980, "local highway authority means a highway authority other than the Minister"
Maintainable highway	As defined in section 329 of HA 1980, a "highway maintainable at the public expense means a highway which by virtue of



	section 36 above or of any other enactment (whether contained in this Act or not) is a highway which for the purposes of this Act is a highway maintainable at the public expense"
Major activities	Major activities are activities which have been identified in a promoter's annual operating programme, or if not identified in that programme, are normally planned or known about at least six months in advance of the date proposed for the activity; or activities, other than immediate activities, where (i) the authority has indicated to the promoter, or (ii) the promoter considers, that an order under section 14 of the Road Traffic Regulation Act 1984 (temporary prohibition or restriction on roads) is required; or activities, other than immediate activities, which have a planned duration of 11 days or more".
Major highway works	As defined in section 86(3) of NRSWA, "major highway works means works of any of the following descriptions executed by the highway authority in relation to a highway which consists of or includes a carriageway -(a) a reconstruction or widening of the highway; (b) works carried out in exercise of the powers conferred by section 64 of the Highways Act 1980 (dual carriageways and roundabouts); (c) substantial alteration of the level of the highway; (d) provision, alteration of the position or width, or substantial alteration in the level of a carriageway, footway or cycle track in the highway; (e) the construction or removal of a road hump within the meaning of section 90F of the Highways Act 1980; (f) works carried out in exercise of the powers conferred by section 184 of the Highways Act 1980 (vehicle crossings over footways and verges); (g) provision of a cattle-grid in the highway or works ancillary thereto; or (h) tunnelling or boring under the highway"
Minor activities	Minor activities are those activities other than immediate activities where the planned duration is 3 days or less.
National street gazetteer (NSG)	A database defined as "an index of streets and their geographical locations created and maintained by the local highway authorities" based on the BS7666 standard
Network management duty	As stated in Part 2 of TMA
NRSWA	New Roads and Street Works Act 1991
Permit	The approval of a permit authority for an activity promoter to carry out activity in the highway subject to conditions
Permit application	The application that is made by a promoter to the authority to carry out an activity in the highway. It is equivalent to the notice of proposed start of works (section 55 of NRSWA) given under the Coordination regime.
Permit Authority	A local authority or other "street authority" which has been given approval by the Secretary of State to operate a permit scheme on all or some of its road network.
Permit Scheme	A scheme approved by the Secretary of State (pre April 2015) or Local Authority Order (post April 2015)
Protected street	Any street that serves a specific strategic major traffic need and therefore needs to be protected from unnecessary excavation and works and providing there is a reasonable alternative route in which undertakers can place the equipment that would otherwise lawfully have been placed in the protected street

Provisional Advance Authorisation	The early approval of activities in the highway, equivalent to the advance notice given under s 54 of NRSWA.
Registerable	Registerable activities correspond to specified works in the regulations
Reinstatement	As defined in section 105(1) of NRSWA, "reinstatement includes making good"
Road	"highway"
Road category	This means one of the road categories specified in paragraph 1.3.1 of Chapter S.1 of the code of practice "Specification for the Reinstatement of Openings in Highways"
Road works	Works for road purposes
Special Engineering Difficulties (SED)	By virtue of section 63 of NRSWA, the term special engineering difficulties relates to streets or, more commonly, parts of streets associated with structures, or streets or extraordinary construction where street works must be carefully planned and executed in order to avoid damage to, or failure of, the street itself or the associated structure with attendant danger to person or property.
Standard activities	Standard activities are those activities, other than immediate activities, that have a planned duration of between 4 and 10 days inclusive.
Statutory right	As defined in section 105(1) of NRSWA, "statutory right means a right (whether expressed as a right, a power or otherwise) conferred by an enactment (whenever passed or made), other than a right exercisable by virtue of a street works licence"
Street	As defined in section 48(1) of NRSWA, "street means the whole or any part of any of the following, irrespective of whether it is a thoroughfare (a) any highway, road, lane, footway, alley or passage; (b) any square or court; (c) any land laid out as a way whether it is for the time being formed as a way or not"
Street authority	As defined in section 49(1) of NRSWA, "the street authority in relation to a street means, subject to the following provisions (a) if the street is a maintainable highway, the highway authority, and (b) if the street is not a maintainable highway, the street managers"
Street works	As defined in section 48(3) of NRSWA, "street works means works of any of the following kinds (other than works for road purposes) executed in a street in pursuance of a statutory right or a street works licence: (a) placing apparatus; or (b) inspecting, maintaining, adjusting, repairing, altering or renewing apparatus, changing the position of apparatus or removing it, or works required for or incidental to any such works (including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street"
Street Works UK	National Body representing Utility Companies
Street works licence	As stated in section 50(1) of NRSWA, "the street authority may grant a licence (a "street works licence") permitting a person (a) to place, or to retain, apparatus in the street, and (b) thereafter to inspect, maintain, adjust, repair, alter or renew the apparatus, change its position or remove it, and to execute for those purposes any works required for or incidental to such works (including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street)
TMA	<i>The Traffic Management Act 2004</i>
Traffic order	This means an order made under section 1, 6 or 9 of the <i>Road Traffic Regulation Act 1984</i>
Traffic sensitive street	This means a street designated by a street authority as traffic sensitive pursuant to section 64 of NRSWA and in a case where a limited

	designation is made pursuant to section 64(3) any reference to works in a traffic sensitive street shall be construed as a reference to works to be executed at the times and dates specified in such designation
Undertaker	As defined in section 48(4) of NRSWA, "undertaker in relation to street works means the person by whom the relevant statutory right is exercisable (in the capacity in which it is exercisable by him) or the licensee under the relevant street works licence, as the case may be"
Unique street reference number (USRN)	As defined in the British Standard BS7666
Urgent activities	Urgent activities are (a) activities (not being emergency activities) whose execution at the time they are executed is required (or which the person responsible for the activity believes on reasonable grounds to be required) (i) to prevent or put an end to an unplanned interruption of any supply or service provided by the undertaker; (ii) to avoid substantial loss to the undertaker in relation to an existing service; or (iii) to reconnect supplies or services where the undertaker would be under a civil or criminal liability if the reconnection is delayed until after the expiration of the appropriate notice period; and (b) Includes activity that cannot reasonably be severed from such activities
Works	In the context of this document 'works' includes; street works, works for road purposes and any other activities on the highway that require a permit.
Working day	As defined in section 98(2) of NRSWA, "for the purposes of this Part a working day means a day other than a Saturday, Sunday, Christmas Day, Good Friday or a bank holiday; and a notice given after 4.30 p.m. on a working day shall be treated as given on the next working day"
Works for road purposes	As defined in section 86(2) of NRSWA, "works for road purposes means works of any of the following descriptions executed in relation to a highway: (a) works for the maintenance of the highway; (b) any works under powers conferred by Part V of the Highways Act 1980 (improvement); (c) the erection, maintenance, alteration or removal of traffic signs on or near the highway; or (d) the construction of a crossing for vehicles across a footway or grass verge or the strengthening or adaptation of a footway for use as a crossing for vehicles"
Works Promoter	A works promoter is anyone (including Utility Companies, Statutory Undertakers, Local Authorities Road Work Providers and Contractors) responsible for undertaking works on the highway.

## Appendix B

### Policy Statement – Circumstances in which the Permit Authority will review, vary or revoke permits on its own initiative

Once a permit has been issued, the activity promoter should have reasonable confidence that the road space will be available for them. However, circumstances beyond the Permit Authority's control may occur which may cause the Permit Authority to review the permit and, as a result, may lead to the conclusion that the permit or its conditions need to be varied or revoked.

The Permit Authority's policy is to avoid making such variations other than in exceptional circumstances which could not reasonably have been predicted or where the impact is significant. Such events may include floods and other adverse weather conditions, burst mains, dangerous buildings, etc. which may result in traffic being diverted onto the road where the activity was underway or about to start.

If the consequent disruption of such events cannot be mitigated in a way other than by varying or revoking the permit, the Permit Authority will adopt the following procedure;

- as soon as the Permit Authority is aware that it may be necessary to vary or revoke a permit, it will contact the activity promoter to discuss the best way of dealing with the situation;
- if these discussions lead to an acceptable solution for both the Permit Authority and the activity promoter, the activity promoter will apply for a permit variation from which the Permit Authority will grant the new permit. Failing that, the Permit Authority will issue an "Authority Imposed Variation";
- in the event that agreement cannot be reached, and the Permit Authority believes the terms to be reasonable, then the activity promoter would have the option of invoking the dispute resolution procedure;
- no fee will be charged for permit variations or the revoking of a permit where it is initiated by the Permit Authority unless, at the same time, the activity promoter seeks additional permit variations; and

- the above policy does not restrict the Permit Authority from revoking a permit if the activity promoter is considered to be acting unreasonably and causing unnecessary disruption to the flow of traffic or pedestrians.

## Appendix C

### Policy Statement – Employment of Sanctions

Failure to obtain a permit, where one is required to undertake specified activities in a specified street/USRN, or to commit a breach of a permit condition, constitutes a criminal offence under the Regulations. The Permit Authority is empowered to employ three courses of action to achieve compliance with the Permit Scheme;

- Fixed Penalty Notices;
- Prosecution; and
- An intervention power.

The Permit Authority will endeavour to resolve problems and achieve the necessary compliance within the Permit Scheme by informal negotiation with the activity promoter concerned.

The use of Fixed Penalty Notices will be used as opportunity to the offender to discharge liability for any offences. Where it has not been possible to informally resolve the situation and there is persistent non-compliance the Permit Authority will serve a notice on the activity promoter setting down the action that is to be taken within a set timescale.

Failure of the activity promoter to positively respond to such a notice may result in the Permit Authority carrying out the required action via prosecution and recovering all reasonably incurred costs from the activity promoter.

As a last resort, and dependent on the seriousness and persistence of the offences, the Permit Authority may proceed to an intervention power.

## Appendix D

### Dis-application / Modifications of NRSWA

#### Dis-applied Sections NRSWA Section

#### Change

#### Permit Regulations – Revised Arrangements

Section 53	The Street works register	Disapplied	Permit regulations prescribe similar provisions for permit registers
Section 54	Advance notice of certain works	Disapplied	Replaced by applications for provisional advance authorisation
Section 55	Notice of starting date	Disapplied	Replaced by applications for permits
Section 56	Power to direct timing of street works	Disapplied	Replaced by permit conditions and variations including those initiated by the Permit Authority
Section 57	Notice of emergency works	Disapplied	Replaced by applications for immediate activities
Section 66	Avoidance of unnecessary delay or obstruction	Disapplied	Replaced equivalent provisions for permit authorities to require Promoters in breach of the permit requirements to take

remedial action and  
failing that for the  
Authority to act. 24  
hour compliance  
period to be replaced  
with a requirement for  
Promoters to comply  
within a reasonable  
specified period  
determined by  
circumstances

For consultation



## Modified Sections

NRSWA Section		Change	Permit Regulations – Revised Arrangements
Section 58	Restriction on works following substantial road works	Modified	The Authority's ability to issue permits with start and end dates replacing directions to start works covered in NRSWA S58 (5) to (7) - The regulations provide the equivalent of S58A powers by allowing authorities to take into account whether Promoters responded to the S58 notice by submitting an application for their planned activities
Section 58A	Restriction on works following substantial street works	Modified	Schedule 3A is modified to work in conjunction with permits
Section 64	Traffic Sensitive Street	Modified	Permit regulations provide the requirement for notifying permit applicants of the proposals for to designate streets as traffic sensitive
Section 64(1)	Traffic sensitive street	Modified	Has effect as if— (a) after “or paragraph 2 of Schedule 3A” there were inserted “or the content, operation, variation or revocation of permit schemes”; and (b) after “street works” there was inserted “or works for road purposes”.
Section 69	Works likely to affect other apparatus in the street	Effectively extended	Permit regulations create an equivalent requirement on highway Authority promoters
Section 74	Charge for occupation of the highway where	Modified	Permit regulations make provision to

	works are unreasonably prolonged		operate S74 powers in parallel with Permits
Section 88	Bridge, bridge authorities and related matters	Modified	Modified to work in conjunction with permits
Section 89	Public sewers, sewer authorities and related matters	Modified	Modified to work in conjunction with permits
Section 90	Provisions as to reinstatement of sewers, drains and tunnels	Modified	Modified to work in conjunction with permits
Section 93	Works affecting level crossings or tramways	Modified	Modified to work in conjunction with permits
Section 105	Minor definition	Modified	Modified to work in conjunction with permits

<b>Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007</b>		<b>Change</b>	<b>Permit Regulations – Revised Arrangements</b>
Paragraph 7	Specified works on specified street	Modified	Modified to work in conjunction with permits

**END OF DOCUMENT**

For consultation