



Department  
for Transport

# Statutory Guidance for Highway Authority Permit Schemes

October 2015



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# Contents

Preface to this statutory guidance	5
1. Part 1 - Framework for permit scheme development (or variation)	6
Section 1: Legal framework	6
Section 2: Processes for developing or varying a highway authority permit scheme	8
Section 3: Permit scheme essentials	9
Section 4: Preparing information to introduce an order.	10
2. Part 2 - Developing a permit scheme	11
Introduction	11
Regulation 3. Consultation for permit schemes	11
Regulation 4. Procedural requirements for commencing permit schemes	11
Regulation 5. Varying and revoking permit schemes at the Permit Authority's request	12
3. Part 3 - Permit scheme content	13
Regulation 6. Specified works	13
Regulation 7. Specified area	13
Regulation 8. Specified streets	13
Regulation 9. Permit scheme provision	13
Regulation 10. Conditions attached to permits	18
Regulation 11. Provisional advance authorisations	18
Regulation 12. Permit reference numbers	19
Regulation 13. Conditions on immediate works prior to obtaining a permit	19
Regulation 14. Criteria to be taken into account by Permit Authority	19
Regulation 15. Review, variation and revocation of permits and permit conditions	20
Regulation 16. Time limits on Permit Authority	20
4. Part 4 - Notification	22
Regulation 17. Notification prior to commencing a permit scheme	22
5. Part 5 - Sanctions	23
Introduction	23
Regulation 18. Action which may be taken for unauthorised works	24

Regulation 19. Offence to undertake works without a required permit	24
Regulation 20. Offence to breach a permit condition	24
Regulations 21 to 28	25
6. Part 6 - Fees	26
Introduction	26
Regulation 29. Prescribed costs	26
Regulation 30. Power to charge a fee and discounts	26
Regulation 31. Savings from the payment of fees and discounts	27
Regulation 32. Application of sums received as fees	28
Fee structure	28
7. Part 7 - Registers and record keeping related to a permit scheme	30
Introduction	30
Regulation 33. Duty to maintain register	30
Regulation 34. Access to register	31
8. Part 8 - Other enactments	34
Introduction to this part	34
Regulation 35. Application of Part	34
Regulation 36. Disapplication of enactments	34
Regulation 37. Modification of enactments	35
Regulation 38. Modification of regulations	36
9. Part 9 - Miscellaneous	37
Introduction to this part	37
Regulation 39. Service of documents etc.	37
Regulation 40. Non-discrimination	37
Amendment Regulation 14 -Transitional provision (Amendment regulations 2015)	38
10. Conclusion	39
Implementing a permit scheme	39
Dispute resolution	39
Annex A – Key performance indicators	40
Annex B – Check List	41
Annex C - Glossary	43

# Preface to this statutory guidance

The Department for Transport considers that well-designed, outcome-focussed, and reasonably implemented permit schemes provide the best method of managing a highway authority's road network and the works that take place in or on the public highway. The main aim of a permit scheme should be to minimise disruption to the authority's network.

Permit schemes affect everyone who uses roads in that area, but they particularly affect those who are responsible for installing and maintaining highways' and utilities' infrastructure, and their contractors. It is considered that better co-ordination of all works, and closer monitoring can be used to drive behavioural change and to ensure that disruption to local communities and road users is reduced.

This Statutory Guidance is provided to support Local Highway Authorities who are developing; varying or operating permit schemes.

# 1. Part 1 - Framework for permit scheme development (or variation)

## Section 1: Legal framework

- 1.1 Highway Authority Permit Schemes were introduced by Part 3 (sections 32 to 39) of the *Traffic Management Act 2004* (TMA) and are regulated in England by the *Traffic Management Permit Scheme (England) Regulations 2007* (the 2007 regulations).
- 1.2 The Deregulation Act 2015 removed in England the requirement for permit schemes to be approved by the Secretary of State. It amended the TMA enabling highway authorities in England to make their own schemes and to vary or revoke existing schemes. Amendments made by the Deregulation Act 2015 and the Infrastructure Act 2015 also enable Highways England to make permit schemes in relation to highways for which it is responsible.
- 1.3 The 2007 Regulations have been amended by the *Traffic Management Permit Scheme (England) (Amendment) Regulations 2015* (S.I. 2015/958) (available at: <http://www.legislation.gov.uk/ukxi/2015/958/contents/made>) to reflect changes made by the Deregulation Act 2015 and other changes to the operation of permit schemes. The amended regulations applied to all new schemes from 30 June 2015 and will apply to all existing schemes from 1 October 2015.
- 1.4 Under section 33(5) of the TMA highway Authorities preparing a permit scheme are also required to have regard to Statutory Guidance issued by the Secretary of State.
- 1.5 In this Statutory Guidance “must” has been used to refer to a statutory requirement. “Should” is used where the Department for Transport strongly recommends specific action is taken. Where “may” is used it refers to those things a highway authority will want to consider in the development of a scheme and as part of its own approval process.
- 1.6 In developing and operating a permit scheme authorities must comply with the TMA and the 2007 Regulations, and must have regard to this guidance.

### **Common elements with *New Roads and Street Works Act 1991* (NRSWA)**

- 1.7 Where a permit schemes is in place a number of provisions of the ‘notice system’ under NRSWA are dis-applied, but in order to facilitate sound working practices, authorities preparing or varying permit schemes should use the same or equivalent definitions or requirements as are used in NRSWA notice system. The authority still has available to it a wide range of powers through other legislation such as the powers contained in: NRSWA; the TMA; the *Highways Act 1980*; and the *Road Traffic Regulation Act 1984*. It may also have powers granted by local acts, particularly in London.

- 1.8 There are additional duties on local authorities (Equality Act 2010), which gives disabled people a right of access to goods, facilities, services and premises.
- 1.9 Statutory undertakers, or those granted a street works licence (under section 50 of NRSWA), have a legal right to carry out street works. Local authority duties are balanced against the statutory obligations (or licensed conditions) of statutory undertakers. The utility companies have statutory obligations to provide a supply or service, and these are closely monitored by the utility regulators to ensure that the required level of service is maintained.

#### **Traffic Authorities - network management duty and duties under NRSWA**

- 1.10 Section 16 of the TMA introduced a network management duty (NMD) on traffic authorities. A permit scheme does not remove the requirements on each local highway authority to perform those duties– even where the permit scheme is operated as a joint scheme.
- 1.11 All scheme developers should have in mind that a permit scheme does not alter or reduce the duties to cooperate and coordinate works set out in sections 59 and 60 of NRSWA.

#### **Legislative differences with regard to NRSWA**

- 1.12 Permit schemes will replace parts of NRSWA - see in particular regulations 14, 36 and 37 of the 2007 Regulations.

#### **Status of this document**

- 1.13 This document is Statutory Guidance. This document and the Statutory Guidance issued 17 March 2015 ("*Statutory Guidance for Highway Authority Permit Schemes - Permit Scheme Conditions*") replace all previous documents. Statutory Guidance related to Permit Schemes is issued by the Secretary of State under section 33(5)(a) of the TMA.
- 1.14 It is expected that further guidance on the development and operation of permit schemes will be provided by The Highway Authorities and Utility Committee – HAUC (England).

#### **Direction to vary or revoke an operational Highway Authority Permit Scheme**

- 1.15 Although the Secretary of State no longer approves permit schemes, he retains the power to direct an authority to prepare a scheme (s33(2(b))) and to direct that a scheme is modified or revoked. Where the Secretary of State makes such a direction, or the authority seeks to cease the operation of a scheme, the authority should notify all works promoters at least four weeks in advance.

## Section 2: Processes for developing or varying a Highway Authority Permit Scheme

- 1.16 An authority must ensure that all aspects of the proposed scheme or variation to an existing scheme comply with the 2007 regulations (as amended), before making the order giving effect to the scheme. Notice of such an order should be provided to statutory undertakers at least four weeks before the order comes into effect. Authorities may wish to consider the checklist at Annex B.

### Types of permit scheme

- 1.17 There are two basic types of permit scheme. **Single-authority schemes** - these cover roads managed by an individual highway authority. Such an option provides the most flexibility, allowing a scheme to be designed around the specific needs of a particular area.
- 1.18 **Multi-authority schemes** – under s33(1)(c) a permit scheme may be developed by an authority acting together with one or more other authorities. Schemes may be managed separately by the individual authorities or managed and run centrally by an authority on behalf of a group of authorities. Such schemes should demonstrate economies of scale and be used to deliver cost efficiencies. Under s33A(2) such schemes do not have effect in the area of the participating authority unless the (each) authority gives effect to it (and any subsequent variation) by order.

### Scheme objectives

- 1.19 Schemes can be used to help deliver a range of local authority objectives, but minimising delays to road users is expected to be the key objective of a permit scheme. During the day-to-day operation of the scheme and the assessment of permit applications, the aim of reducing disruption will be key to the process. It is recommended that scheme objectives are supported by targeted specific financial incentives, such as the application or disapplication of permit fees and fee discounts.
- 1.20 Although a set method will need to be followed to the approach for assessing permit applications, it is recommended that the level of scrutiny carried out is in proportion to the level of disruption that works in each type of location would cause. The question of how to minimise congestion while applying a reasonable duration and requesting specific conditions are added should be considered. For example, we would expect to see a more rigorous approach to the assessment of category 0, 1 and 2, and traffic-sensitive locations than those categorised as 3 and 4. This approach enables lower fees to be applied (or waived) in specific cases.

### Extent of a permit scheme

- 1.21 It is most likely that schemes will apply permits to 100% of the network, with fees being waived or discounted on lower priority roads. Schemes may also choose to operate permits only across the areas largely defined by its **strategically significant streets**.
- 1.22 **Strategically significant streets (SSS)** are defined as including streets which have been designated as traffic sensitive in accordance with the criteria set out in regulation 16 of *The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007*, as well as streets which fall into reinstatement categories 0, 1 or 2 as defined in section S1.3 of the *Specification*

*for the Reinstatement of Openings in Highways (A Code of Practice - April 2010).* We would expect a greater level of scrutiny to be applied to those higher priority parts of the network. Long term planning through improved co-ordination with, and co-operation from, works promoters should also deliver benefits.

### **Highway Authority activities**

- 1.23 Permit schemes must apply to a highway authority's own works in exactly the same way as other works (see regulations 6(2) and 40).

## **Section 3: Permit scheme essentials**

### **Electronic Transfer of Notifications (EToN) system**

- 1.24 Local authorities planning to introduce a permit scheme must be set up to receive applications, issue notifications and otherwise communicate electronically – see regulation 39. Schemes should comply with and use the current version of the Electronic Transfer of Notifications (EToN) protocol.

### **Creating and updating the National Street Gazetteer (NSG)**

- 1.25 Authorities are required to indicate in the Additional Street Data (ASD) as part of the National Street Gazetteer which streets are subject to the permit scheme. The NSG is already used under NRSWA whereby each street has a Unique Street Reference Number (USRN).
- 1.26 USRNs can refer to a whole street or, if the street is long, to part of a street between significant junctions. Permit schemes should provide that a “street” refers to that length of road associated with a single USRN, i.e. to a street or part of a whole street where a street is subdivided. Each local highway authority (which will normally also be the Permit Authority, either individually or jointly with others) must create, maintain and publish street gazetteer data for all streets within their geographical area, whether or not they are the street authority for any particular street.
- 1.27 The specification for street gazetteers is set out in British Standard BS 7666. It is important that permit schemes make sure their street gazetteer is upgraded at least to level 3 of that standard.
- 1.28 Prior to introducing a permit scheme, and at regular intervals after that, the authority should carry out a thorough review of their NSG, in particular of those designated as traffic-sensitive streets. Given the requirement in the regulations (regulation 4 as amended) to evaluate schemes, it would be reasonable to review the NSG every three years. Any proposed updates identified from that process will be subject to the requirement to consult on any changes (regulation 3). Keeping this information current will ensure that cost benefit analysis also remains current.
- 1.29 Discounts - It is expected that schemes are used to encourage behaviours aimed at minimising disruption, and discounts are available to be used to help achieve that aim, e.g. by rewarding high levels of compliant first time reinstatements to reduce the additional disruption caused by remedial works. Planning for discounts should form part of the Business Case.

## Section 4: Preparing information to introduce an order

- 1.30 Each authority will need to prepare information and evidence (including information from the consultation exercise) to support the decision of each Chief Executive (or similar) to bring the scheme into operation. They may wish to refer to the checklist in the Annex.

## 2. Part 2 - Developing a Permit Scheme

### Introduction

- 2.1 It is essential that scheme developers involve stakeholders from the earliest stages of developing or varying a permit scheme. Engagement with stakeholders and consultation should be used to make sure the Permit Scheme is the best one possible for the area. It will also help achieve 'buy-in' from those affected, and maximise value for money.

### Regulation 3. Consultation for permit schemes

- 2.2 There is a statutory requirement for Highway Authorities to carry out a full consultation of stakeholders. **Regulation 3** of the 2007 regulations provides details of those to be consulted. Authorities must consult those specified within **regulation 3** and any other persons the authority consider appropriate.
- 2.3 Consultation should be sufficiently detailed to enable an adequate response to be considered and provided. This means that where a variation is proposed the consultation should be proportionate to the nature of that variation, and that consultees should have the detail they need to make a fully-informed response.
- 2.4 The Secretary of State is listed as a consultee and will consider on a case by case basis whether to make representations.

### Regulation 4. Procedural requirements for commencing permit schemes

- 2.5 There is a requirement under **regulation 4(d)** as amended by the 2015 regulations that before developing a permit scheme the authorities must consider how they propose to evaluate the scheme, so as to demonstrate whether its objectives have been met. Under **regulation 16A** authorities must evaluate their scheme every 12 months of operation for the first 3 years of operation and then every three years thereafter.
- 2.6 The evaluation of the scheme should cover the costs and benefits of the scheme (whether or not financial), and review the level of fees.
- 2.7 Under **regulation 4(2)** authorities are required to confirm in the permit scheme that they have prepared the scheme in accordance with the 2007 Regulations as amended, and regard has been given to this Guidance.

### Key Performance Indicators (KPIs) for permit schemes

- 2.8 A set of Key Performance Indicators (KPIs) has been developed by the HAUC (England) Permit Forum (Annex A) and these may be used to help under pin scheme evaluation.
- 2.9 In addition authorities may wish to use their own KPIs – aligned with their objectives.

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

### Regulation 5. Varying and revoking permit schemes at the Permit Authority's request

2.11 An authority can now vary or revoke its own scheme. Before doing so the authority must consult those identified in **regulation 3(1)**. When consulting the reasons for any variation or revocation should be explained.

2.12 Where the scheme is to be varied the consultation can be in proportion to the variation proposed. For example if, after say three years of operation it is decided that the scheme fees should be reduced, it is unlikely that a detailed consultation will be required but it is recommended that the in-depth reasons for the fee reduction will be set out in the three year evaluation.

## 3. Part 3 – Permit Scheme Content

### Regulation 6. Specified works

- 3.1 This regulation requires permit schemes to set out the works or types of works which the scheme has been designed to control
- 3.2 No scheme can include works carried out under section 50 of the 1991 Act (street works licenses).
- 3.3 Specified works must include works by undertakers and the authority alike and **regulation 40** (non-discrimination) must be complied with.

### Regulation 7. Specified area

- 3.4 **Regulation 7** requires the permit scheme to specify the area within which works' promoters will need to apply for a permit.

### Regulation 8. Specified streets

- 3.5 **Regulation 8** requires the permit scheme to specify the streets (or types of streets) to which it applies. These streets should be specified within the NSG. A permit scheme can only be applied to roads that are maintained at the public expense.

### Regulation 9. Permit scheme provision

- 3.6 The Permit Authority should give all promoters working in their area, or who may potentially work in their area, the name and contact details of those who will be dealing with permit applications, or the details of a fully monitored generic email account. It is suggested that this should be done through a dedicated section on their website rather than the permit scheme itself, so that it is more straightforward to amend if the details change.
- 3.7 **Regulation 9** states that where a permit scheme is in operation, the scheme must require, any promoter of “specified works”, wishing to carry out such works to first obtain a permit from the Permit Authority unless it is a specific exception. The permit allows the promoter to:
  - carry out the specified activity;
  - at the specified location;
  - between the dates shown and for the duration shown; and
  - subject to any conditions that may be attached
- 3.8 **Regulation 9(2)** allows the exceptions to be defined, so that certain activities can take place without requiring a permit. To allow for activities for emergency or urgent reasons, authorities should provide for the initial stage of immediate activities to be exempted from requiring a permit, but promoters should be

required to apply for a permit within 2 hours (or by 10 a.m. on the next working day where the Authorities' contact line is not staffed out-of-hours).

- 3.9 The definition of “permit” in **regulation 2** indicates that a permit must contain details of the duration for which the activity is authorised. That duration may coincide with the validity of the permit, i.e. the time between the start and end dates (inclusive) on the permit. The duration may also coincide with the “reasonable period” for the purposes of section 74 of NRSWA but, again, does not necessarily do so. .
- 3.10 Under **regulation 9(4)** permit schemes must require each application for a permit to be limited to a single street. For consistency with NRSWA, permit schemes should provide that a “street” relates to a single USRN. This means that, where a single street has more than one USRN, separate permits would be needed for each USRN where the activity will take place. Permit schemes should also provide that where activities are carried out in more than one phase (e.g. separate interim and permanent reinstatements) each phase will need a separate permit.
- 3.11 Permits will only be valid from the start date to the end date of the permit. The start and end dates should be in calendar days, even though many aspects of permit schemes will operate in working days. This should eliminate ambiguity about whether the permit is valid or not, even at weekends or on Bank Holidays. That will be important for the operation and enforcement of a permit scheme.
- 3.12 For consistency, Permit Authorities should design their schemes so that:
- for category\* 0, 1, 2, and traffic-sensitive streets, the planned commencement date and finishing date for the activity are the start date and end dates respectively on the permit. The permit will not be valid before the start date on the permit and will cease to be valid once the end date has passed;
  - on category\* 3 and 4 streets that are not traffic-sensitive, permit start and end dates should allow for flexibility in the start of the activity but once the activity is started it must be completed within the duration period specified in the permit. The starting date will be the planned start date for the activity but the end date must allow for the activity starting on the last day of the starting window, noting that the last day of the starting window would then be day 1 of the activity duration. If the permit allows working at weekends or on bank holidays, then the permit start and end dates should accommodate that.

\* As defined in the *Specification for the Reinstatement of Openings in Highways (A Code of Practice - April 2010)*

- 3.13 **Regulation 9(7)** provides for different classes of permit. As previously mentioned the intention is for these classes to mirror the approach under the notice system, so four classes of permits should apply reflecting the work categories in the notice system.
- 3.14 In line with **regulation 9(9)**, Permit Authorities must ensure that their schemes require promoters applying for permits or provisional advance authorisations to copy their applications to an enquirer (usually an authority or undertaker) that has requested to see notices or permit applications on certain streets. **Regulation 37(7)** imposes the equivalent requirement (through modifying the application of section 93 of NRSWA) for copying such an application to the relevant transport authority for activities in the vicinity of a level crossing and tram ways.

- 3.15 **Regulation 9(10)** requires that the permit scheme sets out the grounds for refusing a permit. It is expected that reasons for permit refusal will be considered with works' promoters in appropriate meetings and on-going scheme evaluation.
- 3.16 **Regulation 9(11)** requires that a local authority must issue a permit where the permit application meets the requirements of the permit scheme. This ensures that once a works promoter has met all the requirements for a permit, and the authority has no 'co-ordination' issues with the works taking place, they must issue the permit for works to take place.

### Permits for Major Activities

3.17 Major Activities are those that:

- have been identified in an organisation's annual operating programme or, if not identified in that programme, are normally planned or known about at least six months in advance of the date proposed for the activity; or
  - other than immediate activities, 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.
- 3.18 The promoter should be required to provide the final detailed information in support of its application for a permit nearer the time of the proposed start of the activity - at least 10 working days before the activity is due to commence. Such information will need to include the proposed start and end dates for the activity, which may differ from those in the provisional advance authorisation application, and if so, the applicant should be required to explain the change in their application.

### Permit for Standard Activities

- 3.19 Standard Activities are those activities, other than immediate or major activities, that have a planned duration of between 4 and 10 working days inclusive. (Activities lasting less than 10 working days will be classified as major activities if they require a temporary traffic regulation order, e.g. to close a street or to prevent vehicles from turning left or right.)
- 3.20 When the promoter of the activity applies for this class of permit it should do so at least 10 working days before the activity is due to commence. Such an application should include a description of the proposed activity and the proposed start and end dates.

### Permit for Minor Activities

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

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

### Permit for Immediate Activities

3.23 Immediate Activities comprise:

- Emergency works as defined in section 52 of NRSWA; and
- Activities (not being emergency works) whose execution at the time they are executed is required (or which the person responsible for the works believes on reasonable grounds to be required):
  - (i) to prevent or put an end to an unplanned interruption of any supply or service provided by the promoter;
  - (ii) to avoid substantial loss to the promoter in relation to an existing service; or
  - (iii) to reconnect supplies or services where the promoter would be under a civil or criminal liability if the reconnection is delayed until after the expiration of the appropriate notice period; including works that cannot reasonably be severed from such works.

3.24 These are the equivalent of “urgent works” as defined in The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007.

3.25 Promoters of immediate activities should be required to apply for a permit within two hours of the activity starting (or by 10 a.m. on the next working day where the Authorities' contact line is not staffed out-of-hours). As mentioned above, the permit scheme should provide that activities of this nature may proceed without a permit, given their emergency or urgent nature. However, Permit Authorities should consider making such activities subject to conditions (this is specifically provided for in **regulation 13**).

3.26 The permit conditions imposed will depend on the specific activity to which the permit relates, but must be of a type specified in **regulation 10(2)** and use the wording and numbering set out in the *Statutory Guidance for Highway Authority Permit Schemes - Permit Scheme Conditions* issued March 2015, which can be viewed at: [www.gov.uk/government/publications](http://www.gov.uk/government/publications)

### Description of activity

3.27 Permit schemes should require applications to include a sufficiently detailed description of the activities to be provided to allow the street authority to assess the likely impact of the activity.

### Location

3.28 Permit schemes should require promoters to include an accurate location in their application based on National Grid References (NGRs), one in the centre of the excavation for small excavations, and the provision of sufficient points to clearly identify trenches. These NSGs should be provided together with the dimensions of the space taken up by all the activities in the street. That space needs to cover all the area used by the activity, including for storage of materials, working space, safety zone, provision for pedestrians and traffic management.

### **Timing and duration**

- 3.29 Permit schemes should require each application for a permit to include proposed start and end dates, and to indicate whether the permit should allow for work at weekends and on Bank Holidays (where applicable). It is also suggested that details of the times of day the activity is to be carried out should be required, including any proposal to work at night.
- 3.30 Permit schemes should require the applicant to provide an illustration of the works (including plans, digital photographs etc.) where appropriate. Such a requirement places an added burden on the works' promoter, so should only be applied where it will provide additional necessary information. This may not only apply to major activities, as a small short duration excavation at a critical junction may be very disruptive. This should include details of the nature of the works, whether they are likely to affect more than one lane of the street. A numerical measure of estimated disruption may also be required if available.

### **Technique to be used for underground activities**

- 3.31 Permit schemes should require applicants to supply details of the planned techniques to be used, such as open cut, trench share, minimum dig technique or no dig.

### **Traffic management and Traffic Regulation Orders**

- 3.32 Permit schemes should require applicants to supply details of their traffic management proposals, including any requirement for action by the local authority, such as the need for Traffic Regulation Orders (TROs), lifting of parking restrictions and approval for portable light signals. It may be worth making it clear that TROs have to be applied for in the usual way and to the usual timescales, so that applicants do not think that an application for a permit automatically incorporates an application for associated TROs, or that the timescales applicable to permits apply also to the TRO process.

### **Depth**

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

### **Reinstatement type**

- 3.34 Permit schemes should require applicants to indicate whether the activity is intended to be completed with interim or permanent reinstatement. Permanent reinstatements should be encouraged, and the Permit Authority may consider offering a discount by way of an incentive.

### **Inspection units**

- 3.35 Permit schemes should require applications to include the estimated number of inspection units for the activity, in accordance with the current regulations and guidance.

### **Contact person**

- 3.36 Permit schemes should require all applications to include the contact details of the person who will deal with any problems that may occur during the activity, including provision for out of hours contact by the promoter.

## Issuing permits

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

## Regulation 10. Conditions attached to permits

- 3.38 **Regulation 10** requires that a permit scheme must include provision allowing for conditions to be attached to permits. Where conditions are attached to permits they must be of a type specified in **regulation 10(2)**, and use the wording and numbering set out in the *Statutory Guidance for Highway Authority Permit Schemes - Permit Scheme Conditions* - issued March 2015. Authorities may not impose any additional conditions not covered by the Statutory Guidance when granting a permit.
- 3.39 Where the wording enables discretion (for times etc.) these should be reasonable; deliverable and aimed at effective network management; and the effective monitoring and management of activities. Conditions should be applied following due consideration only where they contribute to meeting the scheme objectives.

## Conflict with other legislation and legal liability

- 3.40 Permit authorities must ensure that no requirement within a permit condition conflicts with the activity promoter's statutory obligations.
- 3.41 It is a requirement of **regulation 10(6)** that the wording of all conditions must conform to the text set out in the Statutory Guidance – Permit Scheme Conditions. Only those conditions, that numbering and that text may be used.
- 3.42 The condition text has been developed with the Highway Authorities and Utilities Committee (England).
- 3.43 From time to time HAUC (England) may suggest changes to the conditions, after completion of its consultation processes. After due consideration the Department may make the suggested changes by updating the Statutory Guidance – Permit Scheme Conditions. Alternatively, the Department may itself wish to make changes, which it will consult on.
- 3.44 The Permit Authority may in certain circumstances wish to vary or impose other conditions for a permit that has already been granted (see **regulation 15**), having regard to the potential of that activity to cause disruption on its network. Such changes must still conform to the condition text in Statutory Guidance – Permit Scheme Conditions. Unless in exceptional circumstances, the authority should first discuss with the works promoter.
- 3.45 To ensure that works are carried out to comply with the permit conditions, works promoters should ensure that site operatives are made aware of the conditions and of the Traffic Management agreements that are in place.

## Regulation 11. Provisional advance authorisations

- 3.46 A permit scheme may include provision requiring a provisional advance authorisation to be obtained in certain cases.

3.47 A Provisional Advance Authorisation lets the promoter know that the proposed activity is approved and enables him to provisionally reserve occupation of the highway. However, as it may be difficult to be certain of the start date three months before the event, the proposed start date is regarded as provisional and may be amended in the application for a final permit.

3.48 An application for a Provisional Advance Authorisation should include the following: -

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

### Permit application for Major Activities

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

## Regulation 12. Permit reference numbers

3.50 Under **regulation 12**, all permits must be given a unique reference number, so as to provide a quick means of cross-referencing and assist in the compilation of the register. EToN numbering conventions should be followed when determining reference numbers, under which variations to permits are denoted by the use of the same unique reference with a suffix.

3.51 Permit Authorities should cross references any linked permits. A condition requires the permit reference number to be prominently displayed on the site of each set of works.

## Regulation 13. Conditions on immediate works prior to obtaining a permit

3.52 **Regulation 13** allows permit schemes to impose National conditions on activities for which the scheme does not require a permit to be obtained before works are begun. In practice this means an immediate activity can commence before a permit is issued.

3.53 Permit Authorities should ensure that their schemes enable them to link immediate activities and the conditions attached to them prior to a permit being issued.

## Regulation 14. Criteria to be taken into account by Permit Authority

3.54 This regulation applies to works where a notice under section 58(1) of the 1991 Act has been issued (restriction of works following substantial road works) in respect of a specified street, and an application for a permit or a provisional

advance authorisation is made in respect of works to be carried out during the prescribed period.

- 3.55 The regulation sets out the criteria an authority should have regard to when considering such applications. Both authorities and utilities should have in mind **regulation 37** (modification of enactments) as it relates to s58 of the 1991 Act and the application of this regulation.

## Regulation 15. Review, variation and revocation of permits and permit conditions

- 3.56 **Regulation 15** provides that permit schemes must include provision for the permit authority to vary or revoke permits and permit conditions.
- 3.57 This is important as it allows the Permit Authority to actively manage activities on the network in the light of changing circumstances. Variations can take place at any time after the permit has been issued and before or during the activity itself, but must be done before the permit end date has passed. The permit scheme must set out clearly how applications for variations to permits must be made in accordance with the latest version of ETON.
- 3.58 A provisional advance authorisation cannot be varied. Permit schemes should be designed so that in circumstances where a PAA has been given but a full permit not yet been issued, the Permit Authority should be informed of any proposed changes and a revised application for PAA.
- 3.59 **Regulation 15(3)** provides that the Permit Scheme must include a statement of the Permit Authority's policy as to the circumstances in which it will review, vary or revoke permits on its own initiative.
- 3.60 The policy statement should include an explanation of the procedures which will apply when the Permit Authority decides to initiate a change. Advance consultation with the permit holder affected will be appropriate in most cases, and wherever possible changes should be agreed with them. Under **regulation 31(2)** no fee may be charged for variations initiated by the Permit Authority.

## Regulation 16. Time limits on Permit Authority

### Timing of applications and Permit Authority response

- 3.61 While it is crucial that applications for permits and variations are made in a timely manner, it is equally essential that Permit Authorities are proactive in responding to permit applications. **Regulation 16** requires time limits to be set out in a permit scheme committing the Permit Authority to respond to applications within set periods.
- 3.62 For reasons of consistency, schemes should use the time periods as set out in the following table. It should be noted that this includes timings for the application for a permit.

ACTIVITY TYPE	Minimum application periods ahead of proposed start date		Minimum period before permit expires for application for variation (including extension) whichever is the longer	Response times for issuing a permit or seeking further information or discussion		Response times for responding to applications for permit variations
	Provisional Advance Authorisation	Application		Provisional Advance Authorisation	Application	
Major	3 months	10 days	2 days or 20% of the original duration whichever is the longer	1 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	

3.63 **Regulation 30(7)** provides that where a permit is granted but subsequently revoked by the Permit Authority prior to commencement of the specified works, the permit Authority must refund in full the permit fee, where the revocation is no fault of the permit holder.

#### Evaluation of permit scheme

3.64 A scheme must contain information on how the Permit Authority will evaluate that scheme. **Regulation 16A** prescribes how this evaluation will take place. As a minimum, schemes must evaluate the scheme after every 12 months of operation for the first three years and then every three years.

3.65 This evaluation must include (**regulation 16A(2)**) consideration of whether the fee structure needs to be updated in light of any scheme surplus or deficit as well as the costs and benefits of operating the permit scheme. Each scheme should also state the schemes objectives and reported on how these and the cost/benefits are being achieved. Evaluation may also consider whether the scheme is meeting the Key Performance Indicators set out in Annex A.

3.66 Each scheme evaluation must be made available to stakeholders (those consulted at the scheme development stage, as set out in **Regulation 3**) within three months of the date on which the evaluation was due.

## 4. Part 4 - Notification

### Regulation 17. Notification of permit scheme

- 4.1 The authority gives effect to a scheme (or a variation to an existing scheme) by making an order.
- 4.2 The authority must notify those set out in **regulation 3(1)** that the order has been made and provide them with a copy of the order and scheme at least four weeks before the scheme is to come into effect. .
- 4.3 Provision of the information to stakeholders should be in a suitable format and conform to the council's own policy on communication with stakeholders should be followed.
- 4.4 Section 36(2) of the TMA allows the Secretary of State to direct an authority to vary or revoke a scheme. Under **regulation 17(2)**, where such a direction is made, the authority must notify those persons set out in **regulation 3(1)** that such a direction has been made at least four weeks before the variation or revocation comes into effect.
- 4.5 A direction may be given where there is evidence that a scheme is failing. A direction may require all authorities to vary their schemes where there is evidence that this would be an advantage to the management of the highway network as a whole.

# 5. Part 5 – Sanctions

## Introduction

- 5.1 The Regulations provide Permit Authorities with sanctions which they may use to achieve compliance with their schemes. Permit Authorities should prepare a statement to indicate how the sanctions will be used.
- 5.2 There are two offences relating to permit schemes – working without a required permit (**regulation 19**) and breaching a permit condition (**regulation 20**). These offences can be dealt with by a Fixed Penalty Notice (FPN), although prosecution through the Magistrates' Courts remains an option for permit authorities. Authorities and utilities are encouraged to resolve issues locally, or through the HAUC (England) mediation procedure, using court action only as a last resort.

## Use of permit scheme Fixed Penalty Notices

- 5.3 The following points should help clarify the purpose for which those offences are intended.
- 5.4 **Time Periods** - Time periods (unless otherwise stated) are in days.
- 5.5 **Time limits** – an FPN may not be given more than 91 calendar days after the offence, beginning with the day on which the offence is committed.
- 5.6 **Payment** - if the undertaker pays either the full penalty or the discounted amount within the required period, then no further proceedings can be taken against that undertaker for that offence.
- 5.7 **Non-payment** - if the undertaker does not pay the penalty within 36 days then the authority may bring proceedings in the Magistrates' Court for the original offence. Under section 127 of the *Magistrates' Court Act 1980* a permit authority must bring the case within six months of the commission of the offence. This should provide sufficient time for authorities to prepare their case and take legal action even if the FPN was not given for some time after the offence was committed.
- 5.8 **Application of Money by the Authority - Regulation 28** states that the permit authority may deduct costs of operating the FPN scheme from the fixed penalties received under section 37 (6) of the TMA. The authority must then apply the net proceeds to promoting and encouraging safe, integrated, efficient and economic transport facilities and services to, from and within the area covered by the scheme.
- 5.9 Authorities should be able to demonstrate that the costs of running the FPN scheme are reasonable and that the net proceeds after deducting these costs are being correctly applied. Although separate accounts do not have to be kept for the FPN scheme, it should be possible to follow the audit trail to check income and expenditure for this scheme.
- 5.10 The introduction of a FPN scheme is intended to drive improvements, and is NOT intended to be an additional source of income for authorities, although some

income may be generated. **The authority should therefore not expect or set income targets for any net proceeds emerging from this scheme.**

## Regulation 18. Action which may be taken for unauthorised works

- 5.11 **Regulation 18(1)** enables Permit Authorities to issue notices in respect of non-compliance requiring remedial action which must be undertaken within the timeframe set in the notice.
- 5.12 **Regulation 18(3)** provides that where an undertaker has not taken the remedial action required within the timeframe, the Permit Authority may take such steps as it considers appropriate, at the cost of the undertaker.

## Regulation 19. Offence to undertake works without a required permit

- 5.13 This regulation makes it a criminal offence for an undertaker, or someone acting on its behalf, to undertake works without a permit. The offence carries a **maximum** fine of level 5 on the standard scale, but may also be discharged by fixed penalty. **Regulation 19** only applies where a specific ‘work’, has been commenced without a permit except to the extent that a permit scheme provides that this requirement does not apply (for example for immediate works where the 2 hour rule applies).
- 5.14 The offence under **regulation 19** does not apply where a valid permit has been obtained for the works, but they continue beyond the permitted duration. In such circumstances the undertaker may have committed an offence of breaching a permit condition under **regulation 20**.
- 5.15 Where an offence is committed under **regulation 19**, it would not be appropriate to impose “over-run” charges on the undertaker under the *Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009* (as amended). This is because there can be no overrun of a non-existent permit.

## Regulation 20. Offence to breach a permit condition

- 5.16 This regulation makes it a criminal offence for an undertaker or someone acting on its behalf to undertake works in breach of a permit condition. The only conditions that a Permit Authority can apply to a permit are those set out in the Statutory Guidance (first published 17 March 2015).
- 5.17 This offence carries a maximum fine of level 4 on the standard scale but may also be discharged by fixed penalty.
- 5.18 The undertaker may also be liable to pay an “over-run” charge to the permit authority under the *Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009* (as amended).
- 5.19 An offence under **regulation 20** is intended to be a single offence. In other words it may only be committed once in relation to each permit condition breached.
- 5.20 When applying penalties for these offences, authorities should be mindful that the purpose of **regulations 19 and 20** is to drive improved behaviour and ensure that the occupation of the highway is as short, and causes the least disruption, as possible.

## Regulations 21 to 28

- 5.21 **Regulations 21 to 28** (and the Schedules set out in the regulations) allow Permit Authorities to issue Fixed Penalty Notices in respect of the criminal offences.
- 5.22 Fixed Penalty Notices offer the offender an opportunity to discharge liability for an offence by paying a penalty and **regulation 25** provides for a discount for early payment. The penalty amount is £500 for working without a permit, but a discounted amount of £300 is available if payment is made within 29 days. For working in breach of a condition the penalty is £120 and the discounted amount £80.
- 5.23 Where a Fixed Penalty Notice has been issued for an offence, but the Permit Authority forms the view that it would be more appropriate to prosecute the offender, the Authority must withdraw the Notice under **regulation 27** before bringing the proceedings. Once the Fixed Penalty Notice has been paid, however, no prosecution in relation to the offence can be brought.

# 6. Part 6 – Fees

## Introduction

- 6.1 Permit Authorities may charge fees in relation to the issuing of permits and must justify those fee levels. The fee levels should be available to those consulted under **regulation 3** and may not exceed those set out in **regulation 29**.
- 6.2 *The Traffic Management Act*, section 37(7), allows charging for the work resulting in the issuing of permits (and variations to permits). However, Permit Authorities may not use their permit schemes to generate surplus revenue, only to cover costs.

## Regulation 29. Prescribed costs

- 6.3 The regulation sets out the costs which fees may recover.
- 6.4 **Regulations 30 to 32** cover fees that can be recovered within a permit scheme, setting the maximum amount that can be charged for a single permit, when they are payable and when not, discounts and the use of the income.
- 6.5 The income from fees must not exceed the total allowable costs prescribed in the permit regulations. 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, which are over and above the cost of the authority's co-ordination duty under NRSWA. This may include the costs related to permits which may not always lead to a permit being granted. Overheads can include: non-salary staff-related costs such as pensions and benefits, proportionate allocation of accommodation, central services and IT costs, as well as general administration and management for monitoring the permit system, KPIs and invoicing.
- 6.6 In the event that fees and costs do not match the actual outturn for any year adjustments should be considered. Transparent information on this should be provided to all stakeholders as part of the published evaluation of the scheme. It is essential that, at least over a three year period fees do not exceed the allowable costs, also that fees must not exceed the proportion of costs for operating the permit scheme incurred in relation to statutory undertakers.
- 6.7 Regulations must be complied with and due regard must be given to this statutory guidance when developing a scheme's fee structure and considering which costs can be included.

## Regulation 30. Power to charge a fee and discounts.

- 6.8 A highway authorities is not required to charge a fee for its own works, but it can use a shadow charging arrangement to show the cost of issuing permits to its own works promoters both to help understand its own costs, and to set those alongside the costs to other promoters.

- 6.9 The fees are structured to reflect the greater work involved in handling larger activities and busier roads. **See Table at 6.24**
- 6.10 The permit scheme must include provision as to the circumstances in which fees may be discounted. This should cover discounts where applications for a number of permits are submitted together and form a wider project, and where undertakers collaborate to carry out their works in the same location simultaneously.
- 6.11 All schemes must provide for a discount for works on traffic-sensitive streets undertaken wholly outside of traffic-sensitive times.

### Maximum fees

- 6.12 The regulations set maximum fees that Permit Authorities may charge. These are set out in **regulation 30(4), (5) and (6)**.

### Recommended fees

- 6.13 The Department recommends that authorities set fees within the limits set out in the fees table in respect of each class of permit.
- 6.14 Where a permit variation would move an activity into higher category, the permit scheme should require the promoter to pay the difference between the permit fee for the two categories as well as the permit variation fee.
- 6.15 These fee levels are intended as maximum fee levels, and it may be appropriate for lower fees to be set.

### Discounts from permit fees

- 6.16 **Regulation 30(1A)** requires that where a Permit Authority is an Approved Authority for 'Lane Rental' under the *Street Works (Charges for Occupation of the Highway) England Regulations 2012*, permit fees may not be charged as well as Lane Rental charges.

## Regulation 31. Savings from the payment of fees and discounts

- 6.17 **Regulations 31(1), 31(2) and 31(3)** prescribe circumstances when no fee is payable or a fee discount applies. In addition, there may be circumstances where through no action, failing or fault on the part of the promoter, the Permit Authority revokes the promoter's permit. This might arise as a result of third party activity. This should be incorporated in Permit Authorities' schemes.
- 6.18 **Regulation 31(4)** sets out the circumstances in which the 30% discount as specified in **regulation 31(5)** applies. In **Regulation 31(5)** an undertaker should be eligible for a discount where an activity involves more than one promoter collaborating in a single coordinated set of works. This should include coordinating with highway authority promoters. It is not intended that this covers area wide activities and the applications should be submitted at the same time – it is recommended that such opportunities are identified at coordination meetings. The primary promoter will require a permit with full information about the activities, and the other promoters will require a permit, with full information, so that the authority knows who is working there. The minimum discount is 30 per cent for all qualifying permits. Authorities can give greater discounts if they wish to encourage particular behaviours.

- 6.19 Permit Authorities are encouraged to design their schemes to offer further discounts, in order to reward particular behaviours that reduce road occupation, such as first time reinstatements.
- 6.20 A Permit Authority may set out specific circumstances when it would always waive or reduce fees. Additionally it is recommended that when developing a scheme the Permit Authority includes provision for waiving or reducing fees in other circumstances, such as when methods are used to speed up the work or reduce the footprint of the works.

## Regulation 32. Application of sums received as fees

- 6.21 **Regulation 32** stipulates that fee income must be applied 'towards the costs of operating the permit scheme which are prescribed costs'. This is defined in **regulation 29** as the costs of the scheme relating to the activities of statutory undertakers. In the event that there is a surplus in a given year, the money should be applied towards the costs of the scheme in the next year and the fee levels adjusted accordingly.
- 6.22 A sustained surplus where the income was regularly exceeding the prescribed costs would indicate that the fee levels should be adjusted. The Secretary of State may also direct the authority to do this using his powers under s36 of TMA.

A scheme's staff costs should **only include staff costs over and above those costs incurred running an effective noticing system**. The income from fees shall not exceed the total allowable costs prescribed in the permit regulations. The allowable costs of the complete scheme and its overall income have to be balanced – not each subsection, such as each activity type. This balance can be achieved over several years – but clarity should have emerged after 3 years of operation.

## Fee structure

- 6.23 The regulations set maximum fees that may not be exceeded in any circumstances. This Statutory Guidance sets out the recommended fee structure for each category of permit. The fee structure is arranged to reflect the greater work involved in handling larger activities and busier roads. The Table of fees is set out below:

<b>Maximum fee structure for each category of works and for a hierarchy of main and minor roads - Road category refers to the reinstatement category of the street under the New Roads and Street Works Act 1991</b>		
<b>Road Category 0, 1 &amp; 2 or Traffic-sensitive</b>		<b>Road Category 3 &amp; 4 and non-Traffic-sensitive</b>
Provisional Advance (It is suggested this fee applies only where value has been added in processing the works)	£105	£75
Major works – over 10 days and all major works requiring a traffic regulation order.	£240	£150
Major works – 4 to 10 days	£130	£75
Major works – up to 3 days	£65	£45
Activity Standard	£130	£75
Activity Minor	£65	£45
Immediate Activity	£60	£40
Permit Variation	£45	£35

### **Circumstances where no fee is payable**

6.24 A promoter cannot be charged a fee where:

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

### **Use of income**

6.25 Permit schemes must not be used with the intention of generating surplus revenue. Income must only be used to meet the costs of the scheme.

### **Keeping accounts**

6.26 Permit scheme costs and income should be kept separately from other income streams, such as over-runs and fixed penalties. This meets the industry regulators' requirements to see a clear separation between costs to undertakers that are avoidable and costs that are not.

# 7. Part 7 – Registers and Record Keeping related to a permit scheme

## Introduction

- 7.1 **Part 7 of the Regulations** 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).
- 7.2 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 Co-ordination of Street Works and Works for Road Purposes and Related Matters*. Again, 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 for EToN.

## Regulation 33. Duty to maintain register

- 7.3 The permit regulations require each permit authority to maintain a register of each street covered by their scheme. The register should contain information about all registerable activities (those activities that have the potential to cause delay or disruption, except those not breaking up the street) on those streets and forward planning information about activities and other events which could potentially affect users of the streets.
- 7.4 Permit authorities will still need a register under section 53 of NRSWA for street information. This will cover those streets that are not part of the permit scheme including non-maintainable streets. It is recommended that authorities meet the statutory requirements for maintaining the two registers in such a way that the information can be combined easily to aid the co-ordination of activities and to provide information to road users.
- 7.5 Permit and notice management systems receive notices and permit applications electronically and allow an authority to manage them together with other relevant information. It often happens that one computer system doubles-up as the register and the permit and notice management system in a permit authority. This is acceptable provided the system fully meets the requirements for both Registers and Notice Management Systems.

## Regulation 34. Access to register

- 7.6 There is a right to inspect the register, free of charge and at all 'reasonable times', except where it is 'restricted information'. Reasonable times may be taken to mean normal office hours (e.g. 08:00 to 16:30, Monday to Friday except Bank Holidays). Restricted information is only available to those having the authority to execute works in the street or those appearing to have sufficient interest (see **regulation 34(1)(a)**).
- 7.7 Permit authorities are strongly recommended to publish their register on a public website. This should be available 24 hours a day, seven days a week, except for those occasional times when it will be unavailable due to upgrade being made to it and maintenance. This work should, wherever possible, be done outside normal office hours.
- 7.8 Much of the detailed information in the register is unlikely to be of interest to the public. It is the responsibility of the local authority to decide how much information to make available in this way.
- 7.9 Authorities should make sure that relevant information remains confidential and make it clear that they are not responsible for the accuracy of information concerning those activities for which they are not the promoter.
- 7.10 The website should allow records to be searched by the USRN or the “street descriptor” (the street name, description or street number) as given in the NSG.
- 7.11 The register must be kept electronically using GIS, as required by *The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007*.
- 7.12 It is essential that information on major, large-scale works, or potentially very disruptive activities is included in the permits register at the earliest opportunity (in either a separate section or flagged as forward planning). The entry should give as much detail as possible. This will enable activity promoters to take part in early co-ordination enable:
- consideration of joint working (Inc. trench sharing);
  - identification of other activities which need to be co-ordinated with these activities; and
  - production of reports for activity co-ordinators.
- 7.13 The minimum information needed is the street involved, the nature of the activity and the proposed dates - which may be just within a calendar year. This information should be reviewed and updated regularly to include details as they are finalised. Forward planning information does not remove the need to apply for a Provisional Advance Authorisation or a permit at the appropriate time.

### Entering information on the register

- 7.14 It is the permit authority's responsibility to enter forward planning information into the relevant section of the register. An EToN transaction has been developed for sending forward planning information - this can be found in the Technical Specification for EToN.

### Requirements for the permit register

- 7.15 The permit register must record:
- copies of all Provisional Advance Authorisations,

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

### **Additional Street Data**

7.16 Additional Street Data (ASD) refers to other information about streets held on the NSG Concessionaire's website alongside the NSG data. Local highway authorities should provide suitable information to the ASD.

### **Responsibility for creating and updating**

7.17 Where the street authority is also the local highway authority, it creates the ASD together with the NSG. Network Rail (which is the street authority for level crossings between the barriers), any other authority, activity promoter or interested party should submit records to the NSG Concessionaire to ensure that their

interest in a street is logged. The interest records should be entered into the ASD maintained by the local highway authority.

## 8. Part 8 - Other Enactments

### Introduction to this part

- 8.1 Part 8 of the regulations relates to the relationship with other legislation, especially as they relate to the dis-application or modification to NRSWA, principally as they provide for the operation of a permit scheme. This Part also provides information for the preparation of an Order.

### Regulation 35. Application of Part

- 8.2 This regulation applies to the specified streets within a permit scheme.

### Regulation 36. Disapplication of enactments

- 8.3 The permit regulations dis-apply or modify certain sections of NRSWA. In permit areas the duties of activity promoters and street authorities under the following sections of NRSWA are replaced by equivalent duties imposed under Part 3 of the TMA and the 2007 regulations as amended:

<b>Promoters' duties – Dis-applied sections of NRSWA</b>			
<b>NRSWA Section</b>		<b>Regulation 36 - (section provided at end)</b>	<b>Permit Regulations – Revised Arrangements</b>
S 53	The street works register	Section 53 (the street works register) Shed (1); Section 53 is prospectively amended by the <i>Traffic Management Act 2004</i> , section 45. [36 (a)]	Permit regulations prescribe similar provisions for permit registers.
S 54	Advance notice of certain works	Section 54 (advance notice of certain works)(2); Shed (2) Section 54 was amended by the <i>Traffic Management Act 2004</i> , sections 40 and 49 and Schedule 1. [36 (b)]	Replaced by applications for provisional advance authorisation.
S 55	Notice of starting date	Section 55 (notice of starting date of works)(3); Schedule (3) Section 55 was amended by the <i>Traffic Management Act 2004</i> , sections 40, 49 and 51 and Schedule 1. [36 ( c ) ]	Replaced by applications for permits.
S 56	Power to direct timing of street works	Section 56 (power to give directions as to timing of street works) (4); Section 56 was amended by the <i>Traffic Management Act 2004</i> , sections 40 and 43(3) and Schedule 1. [36 (d)]	Replaced by permit variations including those initiated by the permit authority and standard conditions.
S 57	Notice of emergency works	Section 57 (notice of emergency works)(5); Section 57 was amended by the <i>Traffic Management Act 2004</i> , sections 40 and 52(3) and Schedule 1 [36 ( e)]	Replaced by applications for immediate activities.

## Promoters' duties – Dis-applied sections of NRSWA

NRSWA Section		Regulation 36 - (section provided at end)	Permit Regulations – Revised Arrangements
S 66	Avoidance of unnecessary delay or obstruction	Section 66 (avoidance of unnecessary delay or obstruction). (6) Section 66 was amended by the <i>Traffic Management Act 2004</i> , section 40 and Schedule 1. [(36 (f))]	Replaced by equivalent provisions for permit authorities to require promoters in breach of the permit requirements to take remedial action and failing that for the authority to act. 24-hour compliance period to be replaced with a requirement for promoters to comply within a reasonable specified period determined by the circumstances.

## Regulation 37. Modification of enactments

- 8.4 The Permit Regulations modify the sections of NRSWA to accommodate the issuing of permits rather than the exchange of notices. Some modifications to NRSWA affect both undertakers' and highway authorities' activities but others do not. It should be noted that promoters should make reference to the legislation in relation to the application of any such modification.
- 8.5 In particular Section (2) of **regulation 37** refers to Section 58 (restrictions on works following substantial road works and section 74 (charge for occupation of the highway where works unreasonably prolonged) apply only to undertakers' activities. It is recommended that the permit authority considers carefully the relevant undertaker's industry responsibilities to connect its customers, and to maintain customer connections, and we would not expect that emergency works, subsequently evidenced, attract any penalty.
- 8.6 The modifications are listed below:

Modifications to NRSWA		
NRSWA Section		Permit Regulations - Revised Arrangements
S 58	Restriction on works following substantial road works. Reference is also made to S54	The authority's ability to issue permits with start and end dates replaces directions to start work covered in S 58 (5) to (78). The regulations provide the equivalent of S 58A powers by allowing authorities to take into account whether promoters responded to the S 58 notice by submitting an application for their planned activities.
S 58A	Restriction on works following substantial street works	Schedule 3A is modified to work in conjunction with permits.
S 64	Traffic-sensitive streets	Permit regulations provide that permit applicants are notified of proposals to designate streets as traffic-sensitive streets. See also Amendment regulations 2015
S64 (1)	Traffic-sensitive streets	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".
S 69	Works likely to affect other apparatus in the street	Permit regulations create an equivalent requirement on highway authority promoters.

Modifications to NRSWA		
NRSWA Section		Permit Regulations - Revised Arrangements
S 74	Charge for occupation of the highway where works are unreasonably prolonged	Permit regulations make provision to operate in parallel with permits.
S 88	Bridge, bridge authorities and related matters	Modified to work in conjunction with permits.
S 89	Public sewers, sewer authorities and related matters	Modified to work in conjunction with permits.
S 90	Provisions as to reinstatement of sewers, drains or tunnels	Modified to work in conjunction with permits.
S 93	Works affecting level crossings or tramways	Modified to work in conjunction with permits.
S105	Minor definitions	Modified to work in conjunction with permits.

## Regulation 38. Modification of Regulations

- 8.7 It should be noted that the wording for paragraph 7(a) of the Schedule to the *Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007* has been modified.
- 8.8 NRSWA imposes various restrictions on all undertakers, such as procedures for working on streets with special engineering difficulties or near to level crossings. Authorities should ensure they apply equal treatment to all works promoters. This, where applicable, includes an authorities own works – see also **Regulation 40**.

## 9. Part 9 – Miscellaneous

### Introduction to this part

- 9.1 The requirements in this section of the regulations relate to the treatment of the applicants for permits and the permits themselves.

### Regulation 39. Service of documents etc.

- 9.2 This regulation sets out how communications between the applicant for the permit and the authority should be made. This will be by electronic means and, it is expected that this will be via the latest version of the Electronic Transfer of Notifications – EToN.
- 9.3 All participants in a permitting regime should ensure that their systems are compliant with the current EToN specification.

### Regulation 40. Non-discrimination

- 9.4 There is a requirement that requests for a permit; the consideration of all works; and the value added by the permit authority to each permit application received are treated equally regardless of the works' promoter.
- 9.5 This will mean that an authorities' works will be treated in the same way as any undertaker except that they are not liable for the fees or sanctions covered in Parts 5 and 6 of the permit scheme regulations.
- 9.6 The requirement for parity of treatment has not altered as a result of changes to the approval process – (the demonstration of parity for authority works is seen as very important).

### Rules of transition – from notices to a permit scheme

- 9.7 The basic rules of transition will apply on all roads where the permit scheme operates.
- The new permit regime will apply to all activities where the administrative processes, such as application for a permit or Provisional Advance Authorisation, start after the commencement date.
  - Activities which are planned to start on site more than one month after the changeover date (for standard, minor and immediate activities) or three months (for major activities) shall operate under the permit scheme. This means that even if the relevant section 54, section 55 or section 57 NRSWA notice has been sent before the changeover, the promoter will have to apply for a permit.
  - Any other activities which started under the notices regime will continue under that regime until completion.
- 9.8 Given the advanced notice of the changeover there should be few activities where these rules will create difficulties. In those few cases, discussions should take

place between the authority and the promoters concerned to work out a practical way of dealing with the activities.

## Amendment Regulation 14 -Transitional provision (Amendment regulations 2015)

- 9.9 This regulation provided the 'transitional' arrangements for existing schemes. It was in two parts. Paragraph (1) requires that by 1st October 2015 Permit Authorities must ensure that existing permit schemes comply with the 2007 Regulations, as amended. The effect of paragraph (2) is that an authority with an existing scheme does not have to consult just to make the changes needed to comply with the amended regulations.

### Statutory consultee

- 9.10 The Secretary of State is a statutory consultee (**regulation 3**) for new and varied schemes. The following email address should be used to provide documents to the Secretary of State in accordance with the requirement in this regulation:  
[permit.schemes@dft.gsi.gov.uk](mailto:permit.schemes@dft.gsi.gov.uk)

# 10. Conclusion

## Implementing a permit scheme

- 10.1 The Department does not provide advice or guidance on the practicalities of the day to day operation of a Permit Scheme in a local authority - it is recommend that authorities consult the Joint Authorities Group (JAG) on any remaining issues.

## Dispute resolution

- 10.2 Various sections of The TMA provide powers to devise a suitable dispute resolution procedure, and to identify the stages of the permit application process at which it can be invoked. Chapter 13 of the *Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters* sets out a process for dispute resolution. It is expected that all concerned will use their best endeavours to resolve disputes locally without having to escalate them.

## Background information

- 10.3 Previous Statutory Guidance and Codes of Practice on Permit Schemes are no longer valid, but may provide background information to support the initial stages of scheme development. They were as follows:
- *Traffic Management Act 2004 Statutory Guidance for Permits* – issued 28 March 2008;
  - *Traffic Management Act 2004 Code of Practice for Permits* – issued 28 March 2008;
  - *Traffic Management Act 2004 Permit Fee Guidance* – issued 1 July 2008;
  - *Traffic Management Act 2004 Permit Scheme Decision Making and Development (2nd edition)* – issued 1 November 2010; and
  - *Traffic Management Act 2004 Additional Guidance for new Permit Schemes* – issued 15 January 2013.

# Annex A – Key Performance Indicators

Reference Number	Indicator
TPI 1	Works Phases Started (Base Data)
TPI 2	Works Phases Completed (Base Data)
TPI 3	Days Of Occupancy Phases Completed
TPI 4	Average Duration of Works
TPI 5	Phases Completed involving Overrun (this will be reworded to make it a positive figure)
TPI 6	Number of deemed permit applications
TPI 7	Number of Phase One Permanent Registrations

These measures, with the exception of deemed permits are all currently available in existing noticing/permit systems, meaning notice and permit authorities can be directly compared.

# Annex B – Check List

## Checklist (1.29) for senior officer approval for finalising a permit scheme.

<b>Full Name of the Highway Authority</b>			
<b>Type of scheme (Single/Multi)</b>			
<b>Date final Checks Completed</b>		Officer who confirms completion of full checks	
		Finance officer final clearance	

**Content checklist: The reference column refers to the relevant section in the 2007 Regulations as amended in 2015 (Rag), and to the 2015 Statutory Guidance (S.G) Part. Reference to this document can be found in section 1.29.**

No.	Reference		Subject	Yes/No	Place in scheme doc
	Rag	S.G. Part			
1		Part 1	Scheme compliance statement – which includes: - - The Legal name of the authority/authorities included - An assurance of EToN compliance - A table showing Regulatory compliance. - Confirmation that all financial requirements have been met		
2.		Parts 1, 2 & 3	The Permit Scheme document must Clearly define the streets the scheme applies to  Detail the team that will be in place to operate scheme.  Detail the approach to post-implementation evaluation  Demonstrate benchmarking undertaken & completed.		
3.	4(c) & 40	Parts 3 & 9	Demonstration of compliance with the non-discrimination obligation.		
4.	4(b)	Parts 1 & 2	Permit Scheme Objectives (including the improvements expected).		

No.	Reference		Subject	Yes/No	Place in scheme doc
	Rag	S.G. Part			
5.	4(d)	Part 3	How and when the Permit Authority proposes to evaluate the scheme so as to measure it continually against its objectives [by written statement from senior manager].		
6.	4(e)	Part 2	The costs and benefits (whether or not financial) which the Permit Authority anticipates will result from that permit scheme.		
7.	4(f)  15 (3) (1)	Part 6	The evidence considered by the Permit Authority as to the fees which may be charged, and the reasons for its decision (fees matrix).  To confirm that the fees and costs are developed in line with the Regulations (15.3.1) and proportionate to the value added by issuing a permit.		
8.	4(g)	Part 1	The proposed Implementation date		
9.	4(h)	Part 9	Details of any transitional arrangements which the Permit Authority would wish to apply in relation to the permit scheme coming into effect.		
10.	3 & 4(g)	Part 1	Consultation Report – changes to scheme clearly shown in response to the consultation.		
11.			Consideration of 'Nationally Significant' initiatives for example: Implementation of Superfast Broadband, HS2, etc.		
12.		Part 1	In developing and operating a permit scheme authorities must comply with the TMA and the 2007 Regulations, and must have regard to statutory guidance.		

# Annex C - Glossary

Term	Explanation
Additional Street Data ("ASD")	Additional Street Data ("ASD") refers to other information about streets held on the NSG concessionaire's website alongside the NSG
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"
Arbitration	As defined in section 99 of NRSWA, "any matter which under this Part is to be settled by arbitration shall be referred to a single arbitrator appointed by agreement between the parties concerned or, in default of agreement, by the President of the Institution of Civil Engineers"
Bank Holiday	As defined in section 98(3) of NRSWA, "bank holiday means a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the locality in which the street in question is situated"
Bridge	As stated in section 88(1)(a) of NRSWA, "references to a bridge include so much of any street as gives access to the bridge and any embankment, retaining wall or other work or substance supporting or protecting that part of the street"
Bridge Authority	As defined in section 88(1)(b) of NRSWA, "bridge authority means the authority, body or person in whom a bridge is vested"
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"
Contravention	As defined in section 329 of HA 1980, "contravention in relation to a condition, restriction or requirement, includes failure to comply with that condition, restriction or requirement, and "contravene" is to be construed accordingly"
Council	As defined in section 329 of HA 1980, "council means a county council, the Great London Council or a local authority"
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"
HA 1980	<i>The Highways Act 1980</i>
HAUC	The Highway Authorities and Utilities Committee
HAUC (England)	The Highway Authorities and Utilities Committee for England

<b>Term</b>	<b>Explanation</b>
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
Highways England	Highways England is the company set up to run the motorways and major A roads in England through legislation within 'The Infrastructure Act 2015'.
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 <i>The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007</i>
JAG (UK)	Joint Authorities Group (UK)
Local Authority	As defined in section 270(1) of the <i>Local Government Act 1972(a)</i> 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"
Local street gazetteer	A subset of the NSG containing details of all streets in a local highway authority area, being a self-contained entity created and maintained by the local highway authority covering all streets in their geographic area regardless of maintenance responsibility
Maintainable highway	As defined in section 329 of HA 1980, a "highway maintainable at the public expense means a highway which by virtue of section 36 above or of any other enactment (whether contained in this Act or not) is a highway which for the purposes of this Act is a highway maintainable at the public expense"
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 <i>Road Traffic Regulation Act 1984</i> (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 <i>Highways Act 1980</i> (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 <i>Highways Act 1980</i> ; (f) works carried out in exercise of the powers conferred by section 184 of the <i>Highways Act 1980</i> (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.
Nationally consistent street gazetteer (NSG)	A database defined as "an index of streets and their geographical locations created and maintained by the local highway authorities" based on the BS7666 standard
Network management duty	As stated in Part 2 of TMA
NJUG	National Joint Utilities Group
NRSWA	New Roads and Street Works Act 1991
OSGR	Ordnance Survey Grid Reference

<b>Term</b>	<b>Explanation</b>
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 " <i>Specification for the Reinstatement of Openings in Highways</i> "
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 managers	As defined in section 49(4) of NRSWA, "the expression "street managers", used in relation to a street which is not a maintainable highway, means the authority, body or person liable to the public to maintain or repair the street or, if there is none, any authority, body or person having the management or control of the street"
Street works	As defined in section 48(3) of NRSWA, "street works means works of any of the following kinds (other than works for road purposes) executed in a street in pursuance of a statutory right or a street works licence: (a) placing apparatus; or (b) inspecting, maintaining, adjusting, repairing, altering or renewing apparatus, changing the position of apparatus or removing it, or works required

Term	Explanation
	for or incidental to any such works (including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street"
Street works licence	As stated in section 50(1) of NRSWA, "the street authority may grant a licence (a "street works licence") permitting a person (a) to place, or to retain, apparatus in the street, and (b) thereafter to inspect, maintain, adjust, repair, alter or renew the apparatus, change its position or remove it, and to execute for those purposes any works required for or incidental to such works (including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street)
TMA	<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
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 <i>Highways Act 1980</i> (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.