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STATUTORY INSTRUMENTS

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**2014 No. 3110**

**HIGHWAYS, ENGLAND**

**The Traffic Management (West Berkshire Council) Permit Scheme Order 2014**

*Made* - - - - *18th November 2014*

*Coming into force* - - *1st March 2015*

The Secretary of State for Transport having approved the West Berkshire Council Permit Scheme under section 34(2) of the Traffic Management Act 2004<sup>(1)</sup> makes this Order in exercise of the powers conferred by sections 34(4) and (5) and 39(2) of that Act.

**Citation and commencement**

1. This Order may be cited as the Traffic Management (West Berkshire Council) Permit Scheme Order 2014 and comes into force on 1st March 2015.

**Interpretation**

2. In this Order—

“the West Berkshire Council Permit Scheme” means the permit scheme set out in the Schedule to this Order in terms commonly known as the “South East Permit Scheme (SEPS)” which was prepared and submitted to the Secretary of State by West Berkshire Council and has been approved by the Secretary of State; and

“specified streets” has the meaning given by regulation 8 of the Traffic Management Permit Scheme (England) Regulations 2007<sup>(2)</sup>.

**Commencement of Permit Scheme**

3. The West Berkshire Council Permit Scheme comes into effect on 1st March 2015.

**Application of Part 8 of the Traffic Management Permit Scheme (England) Regulations 2007**

4. Part 8 of the Traffic Management Permit Scheme (England) Regulations 2007 shall apply to the specified streets within the West Berkshire Council Permit Scheme.

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(1) 2004 c.18.  
(2) S.I. 2007/3372.

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Signed by authority of the Secretary of State for Transport

18th November 2014

*Robert Goodwill*  
Parliamentary Under Secretary of State  
Department for Transport

SCHEDULE

Article 2

THE WEST BERKSHIRE COUNCIL PERMIT SCHEME

**THE SOUTH EAST PERMIT SCHEME  
FOR  
ROAD WORKS AND STREET WORKS  
THE PERMIT SCHEME**

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## The South East Permit Scheme

### DOCUMENT SUMMARY

#### Document History

The South East Permit Scheme submitted to the Secretary of State has been given Version 1.0. Any further developments as a result of the review process will be detailed below:

Date	Version	Comment
22 July 2014	v1.0	Final (SE_Permit Scheme_StatutoryInstrument_V1 FINAL)

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## The South East Permit Scheme

### 1 INTRODUCTION

#### 1.1 **Background**

Part 3 of the Traffic Management Act 2004, (TMA), introduced permit schemes as a new way in which activities in the public highway could be managed and to improve authorities' abilities to minimise disruption from street and road works.

#### 1.2 **Relationship to NRSWA**

The scheme provides a change from the 'notification system' of the New Roads and Street Works Act 1991 (NRSWA). Instead of informing the street authority about its intention to carry out works in the area, a statutory undertaker will need to book time on the highway through a permit, as would the highway authority, its partners and agents, for its own works.

Under the scheme both statutory undertaker's activities and highway authority activities are treated in the same way with regard to co-ordination and the setting of conditions. The Permit Authority shall demonstrate at all times parity between activity promoters ensuring non-discrimination between permit applicants.

#### 1.3 **The Permit Scheme**

This permit scheme, to be known as the South East Permit Scheme, (hereinafter referred to as The Permit Scheme) which will be operated under the powers of the Traffic Management Act 2004 (TMA), has been introduced, to enable any South East Local Highway Authority (hereinafter referred to as the Permit Authority) to better manage activities on their highway network, as well as minimising disruption from utility companies' street works and the Council's own highway works, both of which are covered by the scheme.

It is based on Part 3 of the TMA and the Traffic Management Permit Schemes (England) Regulations 2007, (hereinafter referred to as the regulations) and has been prepared with regard to the Statutory Guidance issued by the Secretary of State and in accordance with the requirements set out in the Regulations. Promoters should make themselves aware of the content of these documents and also The Code of Practice for Permits alongside which the Permit Scheme will be operated. For consistency with the Statutory Guidance and Code of Practice, in the Permit Scheme the term "promoters" is used where the sense includes both utility companies and highway authorities, and "activities" is used rather than "works", even though the scheme applies at present only to street works and highway works.

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### 2 SCOPE OF PERMIT SCHEME AND DEFINITIONS

#### 2.1 **Areas and Streets**

2.1.1 A Permit Authority operating the Permit Scheme will operate the scheme across the whole of the area encompassed by that authority's boundaries. The area covered by the Permit Scheme is the Permit Authorities geographical area of operation; this is the "specified area" as set out in the Regulations.

2.1.2 All streets, for which the Permit Authority is the highway authority, i.e. publicly maintained by or on behalf of the highway authority, are included in the Permit Scheme; these are the "specified streets" as set out in the Regulations.

2.1.3 Trunk roads and motorways for which the Highways Agency is the highway authority are not included in the scheme.

2.1.4 Privately maintained streets are also not included in the scheme, but will be added if they are subsequently adopted by the highway authority and shown as such in the street gazetteer.

#### 2.1.5 **Street Gazetteer**

The street gazetteer for the street authority, used for NRSWA, will be used for the Permit Scheme, including the Unique Street Reference Numbers (USRN) and the Additional Street Data. This forms part of the National Street Gazetteer (NSG) held centrally on behalf of all local highway authorities by a concessionaire. Streets subject to the Permit Scheme will be identified in the Additional Street Data. In relation to permits, the term "street" refers to an individual USRN.

2.1.6 Streets with special controls designated under NRSWA as protected streets, streets with special engineering difficulty (SED) and traffic-sensitive streets will have the same designations under the Permit Scheme. Where those designations are revised, the criteria and procedures in the NRSWA Code of Practice for the Co-ordination of Works will be followed.

2.1.7 In addition to the designations carried across from NRSWA, the Permit Authority may designate in the Additional Street Data certain streets as especially vulnerable to traffic disruption and where an early warning of immediate activities on streets is required. In these cases, the promoter must telephone the authority's specified number given in the Additional Street Data as soon as it is identified that an activity becomes necessary.

2.1.8 Reinstatement categories of streets, where used in the Permit Scheme, are the same as the reinstatement categories under NRSWA, as defined in the Specification for the Reinstatement of Openings in the Highway. If there are revisions to the definitions of category 0 – 4 streets in the Specification, these will be translated into the Permit Scheme.

#### 2.1.9 **Main and minor roads**

The Permit Scheme distinguishes between main roads and minor roads in certain circumstances.

- Main roads – all streets with reinstatement category 0, 1, or 2 and streets in reinstatement category 3 and 4 that are designated as traffic-sensitive for all or part of the time.
- Minor roads – streets with reinstatement category 3 or 4 which are not designated as traffic-sensitive at any time.



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#### 2.2 **Activities Covered by the Permit Scheme**

2.2.1 Subject to the exemptions in 2.2.7 below, permits must be obtained from the Permit Authority by activity promoters for

- street works – as defined in S48 of NRSWA;
- works for road purposes – as defined in s86 of NRSWA

This includes all activities comprising “registerable works” in terms of The Street Works (Registers Notices Directions and Designations) (England) Regulations 2007 and any subsequent amendments. These are the “specified works” as set out in the Regulations.

2.2.2 Further details of what is covered by registerable activities and where there are exemptions is given in the NRSWA Co-ordination of Works Code of Practice: these exemptions are carried across into the Permit Scheme.

2.2.3 Except for immediate activities, promoters must obtain a permit before starting their activities. The Permit Authority, when granting a permit may require specific conditions to be included in a permit application before it will be granted. Promoters must comply with the terms of the permits and any conditions.

2.2.4 One permit can only cover one activity on one street.

2.2.5 Although, street lighting works for the Permit Authority as highway authority are works for road purposes and require a permit, street lighting works and repairs for District and Parish Councils, acting on their own account and not on behalf of Highway Authority, should be treated as street works

#### 2.2.6 **Activities not requiring a permit before they start**

Immediate activities do require a permit but, because such activities are concerned with emergency or urgent situations, a promoter can start work before applying for a permit provided they apply for a permit from the Permit Authority within 2 hours or, in the case of the activity commencing out of normal working hours, within two hours of the commencement of the next working day and comply with any conditions specified by the Permit Authority, whether generic for such activities or specific to one activity.

2.2.7 Works under a street works licence (under section 50 of NRSWA) do not require a permit but have to follow the normal NRSWA procedures through the street authority.

#### 2.2.8 **Categories of activities**

Different requirements apply to different categories of activities, for example longer timescales apply to larger activities.

#### **Permit for Major Activities**

Major activities would be those which:

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

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### Permit for Standard Activities

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

### Permit for Minor Activities

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

### Permit for Immediate Activities:

Immediate Activities comprise:

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

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

These permit categories of major, standard, minor and immediate activities, have broadly the same definition, as those given in the “interpretation” for works categories in The Street Works (Registers Notices Directions and Designations) (England) Regulations 2007, with the following amendments;

- ‘streetworks’ replaced with ‘activity’
- ‘undertaker’ replaced with ‘promoter’ and
- ‘street authority’ replaced with ‘permit authority’

It should be noted that The Street Works (Registers Notices Directions and Designations) (England) Regulations 2007 are subject to change from time to time, and it is the intention of the Permit Scheme that the above permit definitions may change, in line with any changes to these Regulations.

## 2.3 Phasing of Activities

- 2.3.1 One permit can only contain one phase of an activity. A phase of an activity is a period of continuous occupation of the street (whether or not work is taking place for the whole time) between the start and completion of the activities, where all the works described in the works description are completed, unless it can be demonstrated that those works have been legitimately interrupted. The dates given in a permit application and in the issued permit will denote the dates for that

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phase. A phase can end only when all the plant, equipment and materials, including any signing, lighting and guarding have been removed from the site.

- 2.3.2 A promoter must clarify that an activity is planned to be carried out in phases on the application. Each phase will require a permit. With the exception of remedial activities(see 2.5) and the permanent reinstatement of interim works, a major activity will require a Provisional Advance Authorisation (PAA), which will be cross referenced to the subsequent permits.
- 2.3.3 If a promoter is unable to complete all the activity in the permit in one phase for operational or weather reasons and will require a subsequent permit at a later date to complete the activity, they must advise the permit authority and seek agreement on the timing of the subsequent permit. Failure to do so could result in the permit authority treating the subsequent application as an illegitimate use of activity phases (see 5.2.3).
- 2.3.4 Phased activities must relate to the same works. These could be a single or multiple-but-linked excavation, or a trench dug progressively along the street as part of a continuous operation. Or they could be where an interim reinstatement is made and the permanent reinstatement is completed at a later date.

#### *2.4 Linked Activities*

- 2.4.1 Linked activities carried out at separate locations in a street must be treated as belonging to the same set of works. However, unconnected activities carried out by the same promoter in one street must not be treated as parts, or phases, of a single set of works. A new main or cable run, which includes new customer connections, can be classed as one activity if all the work is completed in a single occupation of the street.
- 2.4.2 Even if an activity involving more than one street forms part of one project in management and contractual terms, separate permits and PAAs must be obtained for each street or USRN.

#### *2.5 Remedial Works*

- 2.5.1 Remedial works will require a new permit. Applications for remedial works should be submitted as a new phase of the original activity using the same activity reference. Where remedial works fall within the definition of a major activity then a PAA will not be required.

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#### **2.6 *Interrupted Activities***

- 2.6.1 In the event of an activity being interrupted and delayed, for instance due to damage to a third party's plant or while specialist apparatus is acquired, the promoter shall contact the Permit Authority to agree what action should be taken. Where no works activity takes place for 24 hrs on a permitted working day (unless further activity is waiting materials curing) the promoter must contact the Permit Authority within 2 hours of the start of the next working day to agree what action should be taken
- 2.6.2 Where the Permit Authority is satisfied that the excavation can remain open while the repairs are implemented or the equipment obtained, then a variation will be required. However, where it is considered that the opening should be reinstated and the road returned to full traffic use then the promoter will need to apply for a further permit to complete the work at a later date.
- 2.6.3 If an activity is interrupted at the request of the Permit Authority, the Authority will discuss this with the promoter and agree to a variation to cover the situation, or if necessary grant a further permit to allow the activity to be completed later.
- 2.6.4 Whenever an activity is interrupted, the promoter must first agree a way forward with the Permit Authority before starting any of the processes above.

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#### 2.7 Collaborative Working

2.7.1 Collaborative working means more than just trench sharing. It includes situations when one of the activities is works for road purposes and the other street works. It also includes multi-utility working, multi-utility tunnels and compliance testing.

2.7.2 The Permit Authority strongly encourages promoters to consider collaborative working. It is accepted that there are often issues in such arrangements, particularly contractual complications. Nevertheless every opportunity should be sought to minimise the disruption to users of the highway.

#### 2.7.3 Responsibilities - primary and secondary promoters

2.7.3.1 In the event of collaborative working, one of the promoters must take on the role of primary promoter and take overall responsibility as the agreed point of contact with the Permit Authority. The secondary promoter(s) retain the same responsibility for submitting permit applications for work to be carried out by them or on their behalf.

2.7.3.2 If the nature of collaborative working is trench sharing, the primary promoter will excavate the trench and install its own apparatus. The secondary promoters will install their apparatus in the same trench. The primary promoter will then backfill and reinstate the trench. In this case the responsibility for the quality of the reinstatement will lie with the promoter that completed it. A similar approach to primary and secondary promoters will be followed for other forms of collaborative working.

2.7.3.3 Where the work is trench share only those permit applications submitted by the primary promoter are required to show the estimated inspection units attributable to the street works. The primary promoter must detail the other promoters involved and the scope of the collaborative working in the initial application. The primary promoter must also ensure that estimates of works duration are agreed and/or confirmed with the secondary promoter(s) when submitting permit applications. This is necessary in order to comply with the overrun charging requirements in the permit regulations.

#### 2.7.4 Granting permits

2.7.4.1 To avoid any ambiguity, the Permit Authority will grant permits to all the promoters involved, not just the primary promoter. However, the fees will be adjusted by the amount provided for in the permit regulations to reflect the collaborative approach; provided all the applications meet the criteria set out in the regulations (see 8.3.3). Further reductions can be made at the discretion of the Permit Authority where the collaborating promoters can demonstrate to the Permit Authority significant benefits in terms of the Permit Scheme objectives. All granted permits shall record the identity of the primary promoter and all the secondary promoters.

#### 2.8 Duration of Activities

2.8.1 In a permit the duration of an activity is the number of consecutive calendar days between the start and end of the activity, whether or not work is actually taking place on all those calendar days, and where the activity includes all setting up and clearing of the site and all associated storage.

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#### 2.9 Working Days

- 2.9.1 Working days are used for calculating certain time periods in the Permit Scheme. The same definition of working days is used as for NRSWA. Note that permit start and end dates are not restricted to working days.

#### 2.10 Restrictions on Further Activities

- 2.10.1 The provisions of sections 58 and 58A of NRSWA (restrictions on activities following substantial road works or substantial street works) will operate alongside permits in the Permit Scheme. The processes are slightly modified to reflect the way that the permit scheme operates, but otherwise the same principles apply, including the variable restriction periods on different streets. Details of the modified procedures and the lengths of restrictions are given in Chapter 8 of the Permits Code of Practice.

#### 2.11 Charges for Over-running Activities

- 2.11.1 Charges for over-running street works, under section 74 of NRSWA, will be made alongside the Permit Scheme. The procedures are modified slightly to work with the Permit Scheme, in particular to integrate the establishing of the reasonable period into the permit application and issuing process. But the principles otherwise remain the same as under NRSWA, including the penalty charges. Details of the modified procedures are given in Chapter 16 of the Permits Code of Practice. Where the permit Authority has reason to believe that overrun charges are being avoided by mis-use of permit phases, it will treat a subsequent permit application as an illegitimate use of activity phase (see 5.2.3).

#### 2.12 Relationship with NRSWA and Changes to Legislation

- 2.12.1 The Permit Scheme will replace the part of NRSWA dealing with notices under sections 54, 55 and 57. Other elements of NRSWA, for example in relation to inspections, reinstatements and diversionary works, remain to operate in parallel with the Permit Scheme, modified as necessary so the two, can operate effectively together.
- 2.12.2 The Order for the Permit Scheme disapplies, and modifies in relation to the scope of the Scheme, all those elements of the NRSWA and associated NRSWA regulations identified in Part 8 of the Permit Regulations, namely: Sections of NRSWA disappplied – s53, s54, s55, s56, s57, s66; Sections of NRSWA modified – s58, s73A, s74, s88, s89, s93, s105, Schedule 3A NRSWA Regulations modified – The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007.
- 2.12.3 The notification regime in NRSWA will continue to apply to activities (“works” in NRSWA terminology) where permits are not required. The Permit Scheme, in line with the Statutory Guidance, contains key features which are the same as in the NRSWA notification regime which will allow the two regimes to operate effectively alongside each other.

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### 3 HOW TO MAKE PERMIT APPLICATIONS

#### 3.1 General

##### 3.1.1 Co-ordination and forward planning information

3.1.1.1 The Permit Authority will use the processes and principles in the co-ordination process in the Permits Code of Practice issued by the Department for Transport (DfT). Forward planning by all promoters is an essential part of co-ordination, therefore activity promoters must follow the forward planning information process in the Permits Code of Practice issued by the DfT. They are encouraged to maximise use of non statutory Forward Planning Information Notices (FPIN) to better aid co-ordination.

##### 3.1.2 Requirement to obtain a permit

3.1.2.1 Any promoter of a registerable activity, who wishes to carry out such an activity on a street designated as requiring a permit must obtain a permit from the Permit Authority. The permit will allow the promoter to:

- carry out the specified activity;
- at the specified location;
- between the dates shown; and
- subject to any generic condition that may apply to the permit and
- any specific conditions that may be included in the permit.

3.1.2.2 Any permit granted by the Permit Authority will include all of the information as supplied by the promoter in the application to which it refers.

3.1.2.3 The intention is to better control activities to minimise disruption and inconvenience and for these activities to be carried out in a manner that takes account of the needs of others.

3.1.2.4 Although the Permit Scheme applies to all registerable activities on both main and minor roads, the Permit Authority will not levy a fee for permits granted for those activities which are less likely to have significant impact on the Authority's Road Network; standard, minor and immediate activities undertaken on Non Traffic Sensitive Type 3 and 4 Roads

##### 3.1.3 Types of permit application

3.1.3.1 The Permit Scheme contains two types of permit applications:

- Provisional Advance Authorisation (PAA) – only required for major activities, i.e. those which are large and/or likely to be more disruptive. Effectively this is an early provisional permit issued before the final details of an activity have been worked out. For street works PAAs are similar to section 54 notices under NRSWA, in terms of providing early information about planned activities;
- Permits – full permits with final proposed details -for all registerable activities. For street works these are similar to section 55 notices under NRSWA in terms of providing full details of the proposed activities.

##### 3.1.4 Timing of permit applications

3.1.4.1 The timing of applications will vary according to the proposed activity. Larger activities and those taking place on busier roads, which thus have the potential to be more disruptive to road users, require more time and effort for co-ordination

### The South East Permit Scheme

and planning and hence applications should be submitted earlier than the minimum period required by the scheme. Permit approvals will be based on conditions under which the work may take place, so it is in the best interests of the promoter to contact the Permit Authority early. That way conditions can be discussed and, if possible, an agreement can be reached so that the application contains the required conditions and is approved quickly. Early applications will improve the co-ordination process; it will enable the Permit Authority to better control all the activities that take place on the highway and will help promoters plan their works more effectively. Table 1, within section 4.3 shows permit application and response times.

#### 3.2 *Method of Making Permit Applications*

- 3.2.1 Permit applications, including PAAs and variations, must be made to the Permit Authority electronically via Electronic Transfer of Notifications (EToN) unless there is a failure in the electronic system, or the applicant is a one-off promoter, whereby e-mail applications are acceptable.
- 3.2.2 Recipients of copies of permit applications or of other material relevant to those applications, e.g. transport authorities or frontagers, are unlikely to have access to EToN. In such circumstances applications or other information will be given either by e-mail or by post.
- 3.2.3 **System failures**
  - 3.2.3.1 Failure lasting up to 24 hour duration - The Permit Authority will accept applications for permits for immediate works only by e-mail following pre-agreement with the Permit Authority. These applications must be accompanied by a telephone call to the appropriate contact number.
  - 3.2.3.2 Failure lasting between 24 hours and 3 days - The Permit Authority will accept applications for permits for immediate works and works of Activity Type Minor only by email following pre-agreement with the Permit Authority. These applications must be accompanied by a telephone call to the appropriate contact number.
  - 3.2.3.3 For both failure durations following recovery of service, a copy of the application or notice should then be sent through EToN to ensure that the information on the works is correctly recorded. To avoid receiving erroneous FPNs, activity promoters should endeavour to advise the Permit Authority of any significant system downtime.
  - 3.2.3.4 In the event of system failure, any permit variation applications or to seek further information or discussion should be made by telephone to the appropriate contact number. The officer concerned will issue an individual reference number. This number must be displayed on an electronic application through EToN following recovery of service to ensure correct cross referencing.

#### 3.3 *Content of Permit Applications*

- 3.3.1 All applications must comply with the definitive format and content of both paper and electronic permit applications given in the Technical Specification for EToN. The description of activities and other information should be in plain English without any industry specific jargon.



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- 3.4 *An Application Must Contain Only One Street*
- 3.4.1 Each application must contain information about one activity in one street, where a street equates to a single USRN. To improve co-ordination, projects covering more than one street must cross-reference all related applications. This is particularly important when applying for PAAs. Under no circumstances will an application containing activities in more than one street be acceptable.
- 3.5 *Applications Involving Other Interested Parties*
- 3.5.1 Parties other than the Permit Authority may wish to be informed about activities on a street. Such parties should make sure that their interest is entered in the ASD in the NSG.
- 3.5.2 Before making a permit application, promoters should check whether any parties have registered such an interest in the street. Where the ASD indicates other interested parties, applications for permits, PAAs and variations, and any response to them, must be copied to those parties. Electronic systems meeting the Technical Specification for EToN should deal with this automatically. However, some interested parties may not have access to the electronic systems so they should be sent copies by an alternative method.
- 3.5.3 In addition, within the Permit Scheme, NRSWA sections 88, 89 and 93 are amended as provided for in the Permit Regulations. These sections, along with s90 and s91, deal with notifications to bridge, transport and sewer authorities. The amendments ensure that the same consultation takes place prior to a permit application as under the NRSWA notice regime. The duties on undertakers in relation to streets with special engineering difficulty also remain under the Permit Scheme and the approval to plans and sections from the relevant authorities still has to be obtained. These procedures should take place before the permit application is made. The application should state that the consultation has taken place and where appropriate the necessary approvals have been obtained from the other parties.
- 3.5.4 Works for Road Purposes activity promoters must follow equivalent processes for activities under the Permit Scheme in such situations, and state that they have fulfilled the requirements of these sections in their applications.
- 3.5.5 The consultation requirements with Network Rail are the same as with the NRSWA. These are set out in Appendix C of the Code of Practice for Permits, published in March 2008. Promoters should make themselves aware of these requirements.
- 3.6 *Provisional Advance Authorisation Applications – Timing and Content*
- 3.6.1 The promoter shall apply to the Permit Authority for a PAA at least three months before the proposed start of major activities. This replaces the Advance Notice under s54 of NRSWA. Each permit for a major activity must have an equivalent PAA, i.e. one PAA per street.
- 3.6.2 A PAA must always specify proposed start and end dates. However, it is accepted that it may be difficult for a promoter to be certain of the start date three months before the event, so the proposed start date is regarded as provisional and may be amended in the application for a final permit.
- 3.6.3 While it is anticipated that under the Permit Scheme a granted PAA will normally carry through to a successful permit application, the granting of a PAA does not

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preclude the Permit Authority deciding not to grant a permit for the activity to which the PAA relates.

- 3.6.4 Permit regulations provide that failure to apply for a PAA can be used as a factor in deciding whether or not to grant a permit for a major activity. Under the Permit Scheme the absence of an application for a PAA for a major activity will lead to a presumption against granting a full permit for that activity. Following representation from a promoter the Permit Authority may if it is considered appropriate agree that a PAA is submitted and an early start agreed to enable the submitted permit to be granted.
- 3.6.5 The information to be supplied by a promoter for a PAA is set out in the Technical Specification for EToN. Standard, minor, immediate, remedial and interim to permanent activities do not require an application for a PAA.

#### 3.7 *Timing of Permit Applications*

- 3.7.1 The time requirements for submitting permit applications are set out in (Table 1 in 4.3).
- 3.7.2 **Special requirements for immediate activities**
  - 3.7.2.1 The Permit Authority may designate streets that are particularly vulnerable to activity related congestion on the ASD, to indicate that the Permit Authority requires early warning by telephone of immediate activities on these streets immediately after the activity has been identified. Upon receipt of a telephone call, the officer concerned will issue an authorisation code number for the immediate activity. Where such a number is given, this number must be included on the subsequent electronic permit application. Only those streets that are most susceptible to unplanned disruption will be designated.
  - 3.7.2.2 Any immediate activity can adversely affect traffic (including pedestrians) on the street with the activity and on other alternative routes onto which traffic may divert. Even if the street is not designated, where an immediate activity is likely to cause significant disruption, the promoter should telephone confirmation of the commencement of the activity at the earliest opportunity and in any event within 2 hours of the activity being identified.
  - 3.7.2.3 Examples of situations where significant disruption is likely to occur include: immediate activities on traffic sensitive streets in traffic sensitive times; on streets where traffic is likely to be diverted onto a traffic sensitive street at a traffic sensitive time; on streets that are already in use as a diversion route. Promoters should be especially alert in such circumstances.
  - 3.7.2.4 Permits for immediate activities can contain the same conditions as permits for other activities -subject to obvious variations, such as omitting when activities may start. The exact location may not be known when the application is made.

#### 3.8 *Permit Start and End Dates and Activity Durations*

- 3.8.1 A permit will allow an activity to be carried out for a specific duration between the start and end date on the permit. An activity promoter working outside those dates would not have a valid permit and potentially would be committing an offence. It should be noted that if the work should start on a Monday and finish on a Friday, the subsequent weekend cannot be used as additional days without the express approval of the Permit Authority through a permit variation.

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- 3.8.2 Section 74 of NRSWA still applies to statutory undertakers' activities and the noticing requirements of s74 still apply. The Highway Authorities own activities will be subject to equivalent notices. Therefore, when they began the activity the promoter would have had to submit the s74 Start of Works Notice (or highway activity equivalent) giving the actual start date of the activity. The duration (reasonable period) for s74 purposes must be the same as the duration given in the permit, unless the application granted by the Permit Authority has included a permit condition limiting the duration for s74 purposes to a period less than the permit period, or where a duration variation has been granted and the Permit Authority has issued a Duration Challenge to limit the Reasonable Period.
- 3.8.3 **Main roads**
- 3.8.3.1 On main roads, i.e. all category 0, 1 & 2 streets and category 3 & 4 streets that are traffic-sensitive for all or part of the time, the duration of the activity will exactly match the time from the start date to the end date unless another duration is a specific condition of the permit.
- 3.8.3.2 For example: start date Wednesday 1st June, end date Friday 10th June, duration eight (working) days. The permit start date will be the proposed start date of the activity. If the activity cannot begin on the permit start date, the promoter should, where it is known, inform the Permit Authority the day before the permit start date by means specified by the Permit Authority at its co-ordination meetings. This must be confirmed via an EToN works comment. There is no automatic extension of the permit in these circumstances. If the promoter thinks that they could still complete the work before the permit end date, then they could begin the activity on a subsequent day, submitting a start of works notice under section 74 of NRSWA.
- 3.8.3.3 If the promoter could not complete the activity before the permit end date, they must apply for a permit variation. This would be required even if the extra days were at a weekend (in the above example the permit expires at midnight on Friday night). The Permit Authority may or may not agree to an extension, depending on the circumstances, and the activity promoter may be subject to over-run charges if the over-run days are working days.
- 3.8.4 **Minor roads**
- 3.8.4.1 On minor roads, i.e. category 3 and 4 streets that are not traffic-sensitive at any time, the permit will be issued with start and end dates, and implied duration for the activity. The start date will allow for a flexible window of 5 working days for major and standard activities and 2 working days for minor activities, from the initial estimated start date. The end date will be amended accordingly depending on the original duration.
- 3.8.4.2 Unless a different duration is a specified condition in the permit, or a duration variation has been granted and the Permit Authority has issued a Duration Challenge to limit the Reasonable Period, the duration will be the time from the actual start date to the appropriate end date.
- 3.8.4.3 Thus the start date on the permit will be the planned start date for the activity but the end date may subsequently change due to the activity starting on any day up to the last day of the starting window.
- 3.8.4.4 Once the promoter has notified the actual start of the activity within the window, the permit start and end dates will be re-set so that the permit start date is now the actual start date and the permit end date is then fixed by the duration from the actual start.

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- 3.8.4.5 The normal working day rules apply, i.e. weekdays, although there may be conditions placed on the permit that affect the ability of an activity promoter to make use of weekends or Bank Holidays to work.
  - 3.8.4.6 The activity start date cannot be later than the last day of the starting window.
  - 3.8.4.7 If the promoter could not complete the activity before the permit fixed end date (following the submission of the actual start date) they must apply for a permit variation. This would be required even if the extra days were at a weekend. The Permit Authority may or may not agree to an extension, depending on the circumstances, and the promoter may be subject to over-run charges if the over-run days are working days.
- 3.9 *Information Required in a Permit Application, Including PAA Applications*
- 3.9.1 In deciding whether to include any conditions in a permit; the Permit Authority will consider the information that has been provided in support of the application. The Permit Authority recognises that full information may not be fully known at the time an application for a Provisional Advance Authorisation is made. However, activity promoters should make every effort to provide the most accurate information available at each stage. Required information should be provided in the appropriate EToN field or in the description text where no field exists.
  - 3.9.2 Each application must include a unique reference number. Details of the numbering system are given in the Technical Specification for EToN.
  - 3.9.3 A detailed description of the activity must be provided to enable the Permit Authority to assess its likely impact -similar to that already required under NRSWA.
  - 3.9.4 **Location**
    - 3.9.4.1 Activity promoters must provide the USRN and also an accurate location based on NGR, for small excavations this must be one NGR in the centre of the excavation and, where there are trenches, this must be a number of co-ordinate pairs representing a poly-line, as detailed in the technical specification for EToN. This requirement is a minimum and may not be sufficient to indicate the space to be occupied, so the Permit Authority may seek additional information by way of descriptive text or a works plan (if not provided with the application).
    - 3.9.4.2 Ideally the dimensions of the total space taken up by the activity in the street in the form of a polygon (also covered in the Technical Specification for EToN) should be provided. 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, but excluding advance warning signs such as road works ahead.
    - 3.9.4.3 Promoters applying for permits for immediate activities should do so only once they have begun excavation(see 2.2.6). Even if they find that the location in which they have started digging is not where the activity is ultimately required, a permit is still required because they have broken open the street. A permit variation must be obtained if the location has to be changed as the activities progress (see 5.2.6 multiple excavations).
  - 3.9.5 **Timing and duration**
    - 3.9.5.1 Each application for a permit must include proposed start and end dates and a proposed duration, where the duration is inferred from the start and end dates. If

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the activity promoter proposes to undertake activity on weekends or Bank Holidays to speed up the activity and reduce disruption, then they must specify this in their application.

3.9.5.2 To assist the Permit Authority when determining permit dates and requiring a condition on duration, the following information must be supplied.

- For traffic-sensitive streets, indicate if the activity will take place within or outside traffic sensitive times.
- For all streets indicate if the start or finish time for any activity is to be carried out outside the normal working day\* 8:00am to 6:00pm or if the activity requires night working.
- If, for a major activity, the dates on a permit application differ from those on the preceding PAA, the promoter must explain the reason(s) for the change.

\*The normal working day referred to in the bullet point above is not the working day defined in section 98(2) of NRSWA, as any day except weekends and public and bank holidays.

That working day is assumed to be 08:00 to 16:30. The times are significant only for calculating notice periods. It does not define the day for any other purposes.

In order to allow the Permit Authority to identify works which may have detrimental environmental impacts to residents/businesses, and for it to place conditions on works as appropriate it is essential for them to know if works are proposed to be executed outside the times specified.

### **3.9.6 Illustration**

3.9.6.1 PAA applications and 'Major over 10 days' Activity Permit applications must be accompanied by an illustration(s) of the works and should include details of the activity, the extent of highway occupancy, and where the relevant traffic flow information is available to promoters via the Permit Authority website, a disruption effect score as defined in Appendix G of the Permits Code of Practice. The illustration will comprise plans, sections, digital photographs and similar material.

3.9.6.2 Illustrations may be required for more than just major activities as a small excavation in a critical junction may well be much more disruptive. Therefore where it appears to the promoter that any activity may be significant in terms of potential disruption, due to the position or size of the activity, an illustration should be included with the permit application. If the Permit Authority considers that any particular activity may potentially be significant in terms of disruption they may request an illustration as further information to enable them to consider the application.

3.9.6.3 Activities on those streets or parts of a street, subject to a SED designation will in any case require a plan and section or other specified information. Approvals for an SED must be obtained before the full permit application is made. The preferred method of submitting the plan and section is via an EToN illustration. Details of how illustrations can be transmitted as attachments can be found in the Technical Specification for EToN.

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

Details of the planned techniques, such as open cut, trench share, minimum dig technique or no dig must be provided.

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

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- 3.9.8.1 The activity promoter must supply details of traffic management proposals together with any requirement for action by the traffic authority including, but not limited to:
- the need for Temporary Traffic Regulation Orders (TTROs);
  - the lifting of any parking restrictions; and
  - approval for portable light signals.
- Where applications for these have already commenced prior to the permit application being sent these must be clearly referenced within the application.
- 3.9.8.2 These must be included in the permit application, or referred to when submitting a PAA, and an allowance must be made for the additional costs associated with them.
- 3.9.8.3 For the requirements for TTROs (see 12.1). All activities requiring a TTRO are categorised as major activities. A separate application for a TTRO must be made as well as the PAA or Permit Application.
- 3.9.8.4 The Permit Authority's agreement is required (in its capacity as Traffic Authority) for all temporary traffic signals unless an individual permit authority has granted a general permission in such particular circumstances as are specified. The Traffic Signs Regulations and General Directions 2002 (the TSRGD) Part II Direction 53 provides the requirement that permission is required from a traffic authority for the placement of portable light signals on the highway.
- 3.9.8.5 The appropriate flag in the permit application indicating the proposed use of 2 way or 3 way portable traffic lights must be used.
- 3.9.8.6 The current procedure for additional information is the South East Highway Authorities and Utilities Committee (SEHAUC) procedures for Portable Traffic Signals or an equivalent local process agreed with each Local Highway Authority as outlined at Quarterly Co-ordination meetings and on the Authority's website, which could include the use of a standalone electronic system to process such applications.
- 3.9.8.7 On the commencement of any subsequent EToN revisions which include provision for Portable Traffic Signals functionality the procedure for detailed information will be: All additional information will be submitted through EToN using the appropriate notification.
- 3.9.8.8 Where parking bays are to be suspended, application must be made to the relevant parking authority. This must be separate from any permit application. It is important to fully consider the parking needs of people with disabilities when seeking the suspension of parking bays. Evidence of the agreement of the relevant parking authority must be included in the permit application.
- 3.9.8.9 If the advance approval notice period required for any traffic management is longer than that required for a permit, traffic management can be applied for separately. If this happens it will be necessary to indicate that this is the case on a permit application, cross-referencing the earlier application for traffic management (including parking) by its unique application reference number.
- 3.9.8.10 It will be a condition of any permit where approval action by the Permit Authority or other authority is required that the traffic order is in place or other approval has been given (as appropriate) before the activity, or that part of the activity for which the approval is required, starts on site.
- 3.9.9 **Needs of people with disabilities**

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For all works it is a requirement that full consideration is given to the needs of people with disabilities. This is particularly important in respect of the availability of road space and parking arrangements. It is important therefore at the application stage that any arrangements that will be necessary to accommodate the needs of people with disabilities as a consequence of the proposed works can be established, such as ensuring safe passage, but also whether bus stops and disabled parking bays will be affected or suspended.

**3.9.10 Depth**

Activity promoters must provide their best estimate of the excavation depth. While this might be expressed as a range, it should nonetheless provide a meaningful indication of the nature and extent of activity involved.

**3.9.11 Reinstatement type**

The application must indicate whether the activity is intended to be completed with interim or permanent reinstatement or a mixture of both. If it is the latter, then promoters must provide details as to where interim or permanent reinstatements will be completed within that permit.

**3.9.12 Inspection units**

The application must state the provisional number of estimated inspection units appropriate to the activity, in accordance with the rules laid down in the Inspections Code of Practice and associated regulations. Where there is trench sharing, only the primary promoter is required to give the inspection units (see 2.7.3 on Collaborative Working).

**3.9.13 Contact person**

- 3.9.13.1** The application must include the name and contact details of the person appointed by the activity promoter to deal with any problems that may occur during the activity, including any provision made by the promoter for out-of-hours contact, by use of the Promoter or Contractor contact fields in EToN
- 3.9.13.2** On permit applications (and on PAAs if the information is known at the time) the application should include the name of the main contractor carrying out the activity. This will help with the Permit Authorities consideration of the application and with any discussions that need to take place before the permit can be agreed.

**3.10 Early Starts**

- 3.10.1** An activity must not start before the expiry of the application period except where an early start has been agreed via EToN with the Permit Authority, and any other interested parties. The Permit Authority will give consideration to allowing early starts (i.e. proceeding before the end of the full application period set out in Table 1 in 4.3), provided it is established that;
- I. there is no reason not to do so, or it is actually beneficial to do so,
  - II. the activity promoter requesting the early start is able to demonstrate a legitimate reason for the request.
  - III. every effort has been made to adhere to the specified minimum advance notice periods specified in the Permit Scheme Regulations,
  - IV. There is no history of continual requests for early starts from the activity promoter.
- 3.10.2** An activity promoter may request an early start at the same time as or after applying for a PAA or a permit application, as appropriate. Where an early start is

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agreed after the permit has been issued, the promoter must submit a variation to the permit, or in the case of a PAA include the revised dates on the application for the permit.

- 3.10.3 If an activity promoter requests an early start after the initial permit has previously been issued, and this is agreed by the Permit Authority, then there will be a charge for the associated permit variation. Where the early start request is submitted as part of the initial application, no variation is required (See 5.2.4.1).

3.11 *Error Correction*

- 3.11.1 The process detailed in the Permits Code of Practice and the EToN specification must be followed.



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### 4 ISSUE OF A PERMIT AND INCLUSION OF CONDITIONS

#### 4.1 General

4.1.1 When considering applications for permits, including PAAs, and deciding the terms of a permit and of any specific conditions, The Permit Authority will act reasonably, for example:

- taking account of the proposed activity's potential to cause congestion and disruption;
- recognising the needs of other users of the highway, and the integrity of the highway itself;
- taking account of how feasible it is for the activity promoter to comply e.g. given the area of occupancy and the restrictions imposed by the available industry resources and technical capabilities;
- allowing works to be carried out in compliance with statutory guidance and codes of practice especially in relation to safety (such as *Safety at Street Works and Road Works*).

4.1.2 The permit for an activity will specify the activity it allows in detail and will include any specific conditions. This information will be drawn from the application. As a minimum, any constraints in the original application will be reflected in the terms of the permit. A typical example would be, if the activity is in a street which is traffic-sensitive in some places and/or at some times and the application stated that the activity was to be outside the traffic-sensitive places and times, this would then become a term of the permit; or if a minimum dig method is proposed then that would become a term. However, this does not restrict the Permit Authority from imposing such conditions as it considers appropriate, taking all factors into account.

#### 4.2 Granting Approved Permits

4.2.1 When the Permit Authority is content with an application from an activity promoter, it will issue a permit. Each application will lead to a separate permit. The permit will contain the location and description of the activity, the start and end dates of the period for which the permit is valid, the implied duration and any conditions imposed by the Permit Authority. The permit will also include reference to any associated documentation such as drawings. Where the drawings have been submitted as EToN attachments they will be accessible electronically through the permits register.

4.2.2 The Permit Authority will grant permits electronically using EToN. If the electronic system is down or unavailable for any reason then permits will be issued by e-mail. Each permit will be given a unique reference, which must be displayed on the site information board. Variations to permits will be denoted by the use of the same unique reference with a suffix to denote the variation.

4.2.3 Where other parties have expressed an interest in a street and the application for a permit has been copied to them, the permit will also be copied to those parties by the Permit Authority when it grants the permit to the activity promoter.

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**4.3 Response Times**

- 4.3.1 The Permit Authority intends to respond to all permit applications and PAA applications within the timescales set out in Table 1 below. That response will be to approve the permit, or to refuse the permit. Prior to refusing the Permit Authority will contact the promoter to discuss possible variations to the permit or to seek further information or clarification about the application. If the further information or clarification cannot be resolved within the response time scales, the permit will have to be refused until the matter is settled satisfactorily. In the event that no response is received either granting or refusing the permit within the set timescales, the permit will be deemed to have been approved (see 4.5).
- 4.3.2 For approved permits the Permit Authority will respond by granting the permit through the EToN system.
- 4.3.3 For refused permits the Permit Authority will respond through the EToN system, but this will be in conjunction with a discussion of the reasons for refusal and what changes would be needed to achieve a successful application.
- 4.3.4 For discussions or further information the Permit Authority will respond by EToN comment, telephone, email, in writing or by other means, as appropriate, and may arrange a meeting. Any dialog /agreement will be recorded in an EToN comment.

**Table 1: Application and Response Times**

APPLICATION AND RESPONSE TIMES (in working days)						
Activity Type	Minimum application periods ahead of proposed start date **		Minimum period before permit expires for application for variation (including extension)	Response times for The Permit Authority for issuing or refuse a permit (seeking further information or discussion must be done prior to issue or refusal)		Response times to applications for permit variations
	Application for provisional advance authorisation	Application for permit		Application for provisional advance authorisation	Application for permit	
Major	3 months	10 days	2 days or 20% of the original duration whichever is the longest	1 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	

\*\* note that if an activity requires approvals for TTRO or temporary traffic signals or parking suspension then the relevant timescales for these need to be taken into account. (see 3.9.8)

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### 4.4 *Permit Applications not approved*

#### 4.4.1 **Refusing a permit**

- 4.4.1.1 The Permit Authority recognises that legitimate activities cannot be refused, however the Permit Authority will refuse a permit application if elements of the proposed activity are not acceptable. In such circumstances the Permit Authority will contact the activity promoter as soon as possible, and within the period specified in Table 1 above, to explain precisely why the application is not satisfactory and which elements needs modification. If agreement can be reached, the activity promoter will be able to submit a modified application with conditions reflecting that agreement, and if necessary with an early start agreement to reflect the reduced notice period. Otherwise, the work may need to be rescheduled.
- 4.4.1.2 Grounds for refusing a permit must relate to the types of condition listed in Regulation 10(2) of the Permit Regulations, they may include the following but the Permit Authority reserves the right to invoke other grounds in appropriate circumstances:
- Timing and duration;
    - when the activity can be completed more speedily or, that realistically, not enough time has been allowed; or
    - when the specific dates and times proposed may clash with other proposed activities or events which occupy road space, in such a way as to be likely to cause an unacceptable level of disruption.
  - Overlapping activities – where other activities are scheduled to take place in the same street, or other streets affected by the proposed activity, at the same time,
  - Location of activity - the Permit Authority may refuse to issue a permit due to the proposed location of the activity. The Permit Authority will treat considerations of location in a similar way to the provisions under s56A of NRSWA.
- 4.4.1.3 In the event of refusing a permit, or requesting changes or further information, the Permit Authority will contact the activity promoter to discuss the application, as described above and will seek to agree an acceptable way forward. When an agreement is reached, the promoter must make a modified permit application. Where a modified permit application is submitted, and the original application has not been refused or deemed the later of the response time for the permit and variation will be used for reckoning time periods for responding to the application. Where the original application was refused, the modified application must be submitted as if it were a new application in terms of time scale or include an early start request.
- 4.4.1.4 If agreement cannot be reached in the time available, the Permit Authority will refuse the permit and the promoter must make a new application, which would then be considered in the usual way.
- 4.4.1.5 The activity promoter has a right of appeal if it is unable to reach agreement with the Permit Authority over the terms of the permit or the conditions. In the case of immediate activities it may be that work has to stop, if it is safe to do so, until the issues are resolved. The Permit Authority will decide on a case by case basis if that is necessary, but will always seek to discuss the situation with the activity

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promoter and will take into account all the relevant factors in coming to a reasonable decision. For full details of dispute procedures, refer to section 7 (Dispute Resolution) of this document.

#### 4.5 *Permit Application Deemed to be Approved*

- 4.5.1 If the Permit Authority fails to reply to a permit application (approving or refusing the permit) within the response times given in Table 1 in 4.3, the permit will be deemed to be granted in the terms of the application. The proposed start and end dates, description, location, duration, etc. will be carried across into the permit and any condition in the application will become conditions for that activity. Those permit terms and the conditions will then be binding on the activity promoter as they would for a permit actively issued by the Permit Authority; breaching them will be an offence.

#### 4.6 *Time when a Permit is Valid*

- 4.6.1 A permit is valid only for the period between the start date and end date (inclusive) on the permit.
- 4.6.2 On main roads (i.e. category 0, 1, and 2 streets and category 3 and 4 streets that are traffic-sensitive for all or part of the time), the start and end of the permit period will match the start and finish dates for the activity. The activity promoter must not carry out any activity, including delivery and storage of materials on site, outside of these times without applying for and obtaining a permit variation from the Permit Authority.
- 4.6.3 Activities on minor roads (i.e. category 3 and 4 streets that are non traffic-sensitive streets at any time) will be less disruptive. On these streets the promoter will be allowed some flexibility in the start date but once the activity is started it must be completed within the activity duration period specified in the permit. The start date will allow for a flexible window of 5 working days for major and standard activities and 2 working days for minor activities, from the initial estimated start date. The end date will be amended accordingly depending on the original duration. Noting that the last day of the starting window would then be day 1 of the activity duration.
- 4.6.4 The permit start and end dates will be in calendar days. This will prevent ambiguity as to whether the permit is valid, even at weekends or on Bank Holidays.
- 4.6.5 The permit terms will always include the duration of the activity which is automatically derived from the Start and End dates i.e. the number of consecutive calendar days that the activity can take place.
- 4.6.6 If the permit allows working at weekends or on Bank Holidays, then the permit start and end dates will accommodate that, even though those calendar days will not count towards the activity s74 duration or, on category 3 and 4 non traffic sensitive streets, the starting window.

#### 4.7 *Location and Description*

- 4.7.1 The permit will contain the location of the activity, including national grid reference(s) and a description of the activity. This information is drawn directly from the application information.

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### 4.8 Contact Details

- 4.8.1 Contact details for the activity promoter will be included on the permit.
- 4.8.2 The Permit Authority will provide its contact details, including the out of hours contact information, on its website.

### 4.9 Conditions Included in Permits

- 4.9.1 A permit granted by the Permit Authority will specify in detail the activity that has been allowed. Except in the case of an Authority-imposed variation, the entire promoter's information contained within the permit will be taken from the application, including any associated conditions.
- 4.9.2 The seven categories of conditions detailed below are included in the Permit Scheme and shall be utilised as required.
- 4.9.3 Where there exists statutory guidance or a Code of Practice relating to a condition that the permit authority wishes to impose, they will not impose conditions that contradict the requirements of that guidance or CoP.
- 4.9.4 However, under the Permit Scheme the Permit Authority can define standard conditions that will be applied to all permits or when particular criteria are met. An example is the display of permit reference numbers. Standard conditions will be published on the Permit Authorities website and activity promoters will be notified in advance of any new conditions at the quarterly SEHAUC meetings.

#### 4.9.5 Timing and duration of activity

The terms of every permit will contain the maximum duration, in calendar days, of the activity, as implied by the permit start and end dates.

Other conditions may include:

- Dates between the start and completion dates on which works should not take place, which may also include periods when the site should also be cleared of all plant, materials and equipment, including all traffic management measures and signing, lighting and guarding (plating of excavations may be appropriate where agreed with the Permit Authority).
- The times of calendar day at which works cannot be carried out:
- Whether the duration prohibits weekend or Bank Holiday working.
- A specified duration other than the number of days as implied by the permit start and end dates.

If the activity cannot be completed within the duration or timeframe specified in a permit condition, the promoter must apply for a variation.

#### 4.9.6 Road space

The amount of space that activities in the highway occupy can have a major impact on congestion and disruption levels. If associated plant and excavated material take up a greater area, possibly resulting in lane restrictions and temporary traffic control measure, the impact could be magnified considerably. The area occupied could be reduced if unnecessary plant and excavated material is removed swiftly. Where no work force is on site and as a result no activity is taking place, safety zones should be reduced as per the NRSWA Safety Code of Practice.

The following road space conditions may, for example, be attached to the permit:

- whether materials and plant can be stored on site;

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- the width and/or length of road space that can be occupied -including allowing for signing, lighting and guarding -at any one time, during the period of the works;
- the road space that is to be available to all traffic including pedestrians at certain times of day.

#### 4.9.7 Traffic management provisions

Activity promoters must include their traffic management proposals within the permit applications.

The Permit Authority may require traffic management conditions, for instance:

- that the road, or relevant section, should be closed to traffic during the works under section 14 of the Road Traffic Regulation Act;
- prescribing the method of traffic control and the area over which this control method is applied, (i.e. shuttle working and/or portable traffic signals etc.)
- requiring the activity promoter to advise changes in traffic management with any works phase.

#### 4.9.8 Methodology for carrying out activities

The method the promoter proposes to carry out the activity can have a significant effect on the level of disruption. For example, promoters should seek to employ minimum dig technology wherever practical to minimise inconvenience to the public and reduce congestion. The Permit Authority may make requirements for conditions related to the methodology, following discussions with the activity promoter.

#### 4.9.9 Consultation and publicity

Based on the information provided within the application, the Permit Authority will be able to confirm whether the proposed activity or activities have the potential to be especially disruptive to local residents businesses and/or road users. In such circumstances the Permit Authority will require the activity promoter to provide advance publicity to nearby householders or businesses, or to traffic or pedestrians using the road. If the planned activities will require a bus stop closure or a change of bus route or significant delays the Permit Authority may require the promoter to consult with the bus company regarding alternative services in order to minimise the impact of the works.

In the case of major activities which require a PAA a Permit Authority cannot impose a condition upon a PAA. Therefore in order to ensure that an effective advance publicity exercise can be carried out, they will inform the promoter of such at the PAA stage. When the subsequent application is made for the full permit, the promoter will be required to supply evidence with that application that the notification exercise has been carried out and this will be reflected in a condition upon the full permit.

#### 4.9.10 Environmental conditions

The Permit Authority may apply appropriate environmental conditions. These may include, but are not limited to restrictions on working hours due to noise reduction in residential areas, restrictions on disposal of waste, and considerations that may be necessary to protect wildlife. If it is considered necessary to impose environmental conditions, full information will be given by the Permit Authority to the activity promoter at the earliest opportunity. Any environmental conditions required will be with the express consent of those responsible for such matters within the local authority area.

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#### **4.9.11 Conditions as to progress**

It will be a condition of all permits that, where it is known that the permit is no longer required, the Permit Authority must be informed the day before the permit start date by means specified by the Permit Authority at its co-ordination meetings. This must be confirmed via EToN, or, in the case of permits on minor roads, no later than the day before the end of the starting window.

#### *4.10 Conditions Attached to Permits for Highway Works*

##### **4.10.1** The Permit Authority may require the activity promoter to:

- consult with any person likely to have apparatus affected by the proposed works,
- comply with any reasonable requirement of the apparatus owner to protect the same.

#### *4.11 Conditions for Immediate Activities*

**4.11.1** Standard conditions will apply to immediate activities for the period before a permit is issued. Standard conditions will be published on the Permit Authority website and activity promoters will be notified of any new conditions at the quarterly SEHAUC meetings. Following discussions with the promoter, the Permit Authority may require additional conditions for individual immediate activities before a permit is issued.

**4.11.2** All activity promoters carrying out immediate activities on certain designated streets are required to contact the Permit Authority, by telephone, immediately after identifying the activity. These designated streets have been indicated with an ASD record in the NSG.

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### 5 VARIATIONS TO PERMITS

#### 5.1 *General Principles*

- 5.1.1 Within the Permit Scheme the Permit Authority has the powers under Permit Regulation 15, to review, vary or revoke permits and permit conditions. However, the Permit Authority is under no obligation to allow activities to continue beyond the permitted period.
- 5.1.2 A PAA cannot be varied. If a full permit has not yet been issued, and the activity promoter needs to make changes, then the promoter must inform the Permit Authority of the proposed changes and make a revised application for a PAA or permit. If the Permit Authority requires changes to the PAA then, after discussion with the promoter, the promoter must make a new application but in this case no fee will be charged.

#### 5.2 *Variations Initiated by the Activity Promoter*

##### 5.2.1 **For a variation – by promoters**

- 5.2.1.1 From time to time an activity promoter may need to apply for a justifiable variation to a permit and/or its conditions, including an extension of the agreed duration.
- 5.2.1.2 The purpose of the Permit Scheme is not to prevent necessary activity, so an application for a justifiable variation is likely to be granted, although the Permit Authority will consider the wider network implications of the changes and other relevant factors.

##### 5.2.2 **Extensions**

- 5.2.2.1 The Permit Authority is under no obligation to let works run beyond the permitted period.
- 5.2.2.2 Whilst the Permit Authority will grant the extension to minimise disruption in many cases, there may be occasions where the activity promoter will have to vacate the street to allow other activities to take place and submit an application for a new permit to complete their activity at a later date. Plating of excavations may be appropriate where agreed with the Permit Authority.
- 5.2.2.3 Activities which exceed the duration in the permit without good reason will potentially be subject to overrun charges under s74 of NRSWA. In these instances, the Permit Authority may decide to extend the end date of the permit to allow the activity to be completed, depending on the co-ordination of other works in the area. However the reasonable period for s74 purposes will not be extended, and the issue of a Duration Challenge will enable s74 charges to apply even though a valid permit is in force.

##### 5.2.3 **Illegitimate phasing of activities**

Where the Permit Authority can establish to its reasonable satisfaction that a subsequent permit application has been made at any given location as a result of:

- The closure of works following a refusal by the permit authority to grant an extension to the duration of a previous permit, or
- The premature closure of the activity by the promoter, before all those works specified in the activity description given by the promoter are completed, to avoid an overrun under s74 occurring.



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The Permit Authority may grant a subsequent permit with start and finish dates to allow the initial activity to be completed. However, the duration for this subsequent permit will reflect the illegitimate phasing of activities for these works and overrun charges will be applied in accordance with the current s74 regulations.

#### 5.2.4 Fees for activity promoter initiated variations

5.2.4.1 In order to incentivise works promoters to plan and submit permits accurately in the first instance, a fee is levied by the Authority for all granted promoter initiated permit variations regardless of road type, with the exception of early start requests which are submitted as part of the permit application.

5.2.4.2 The current fee charges are published on the Permit Authorities website.

#### 5.2.5 Applying for a variation

5.2.5.1 The Permit Authority may need to investigate before granting a variation, so it is strongly recommended that all requests for permit variations are made as soon as it becomes clear that the activity will overrun or otherwise change. Prior discussion by activity promoters with the Permit Authority is also recommended so that variation applications can be dealt with quickly.

5.2.5.2 An activity promoter may apply to vary an existing permit at any time before it expires as follows:

- where the existing permit has more than 20% of its duration or more than two days to run, whichever is the longer, the promoter must apply for a variation electronically;
- in any other case the activity promoter should first contact the Permit Authority by means specified by the Permit Authority at its co-ordination meetings to ascertain whether the authority is prepared to grant a variation, and apply again electronically only if the authority agrees;

5.2.5.3 The Permit Authority will respond to the request within two days of receipt.

5.2.5.4 If the electronic systems fail, then applications may have to be sent another way, such as e-mail.

5.2.5.5 Where an activity promoter applies for a variation, the application must contain sufficient information to show precisely the nature and implications of the changes. Providing insufficient or inadequate information will lead to delays as the Permit Authority will need to go back to the promoter to obtain further information or clarification. In all circumstances the application must include the proposed dates and duration of the activity, whether or not they have changed.

5.2.5.6 Applications for permit variations must follow the procedures for permit applications outlined earlier in this document, including copying the application to parties which have expressed an interest in that street.

#### 5.2.6 Multiple excavations

5.2.6.1 The Permit Scheme includes the following arrangements for Immediate activities requiring a series of fault-finding excavations or registerable openings. The activity promoter must submit the first permit application containing the location of the initial excavation or opening within two hours of the activity commencing;

- for any further excavations on the same street within 50 metres of the original hole, the promoter must contact the Permit Authority by the agreed method with the new location. No permit variation will be needed and no permit charge will apply,
- the promoter must apply for a permit variation for the first excavation in each

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further 50 metre band away from the original hole in the same street, i.e. 50-100 metres, 100-150 metres etc. Standard variation charges will apply

- for additional excavations within each band the promoter will contact the Permit Authority by the agreed method with the new location. No permit variation is needed and no permit charge will apply,
- if the search carries into a different street, or a new USRN (including if the street changes to a different authority), then the promoter must make a separate permit application or NRSWA notice, as appropriate.

#### 5.3 *Variations Initiated by the Permit Authority*

- 5.3.1 The Permit Authorities may review the permit and associated conditions in the event of circumstances beyond its control having a significant impact. An example would be if extra traffic was diverted onto the road for which the permit has been issued due to another road being unexpectedly closed for any reason such as; floods, burst mains or a dangerous building. If the consequent disruption cannot be mitigated in another way, it may be necessary to vary aspects of the permit, such as the time or manner of working.
- 5.3.2 If the Permit Authority considers that a variation is necessary, it will first contact the promoter to discuss the best way of dealing with the situation whilst meeting the co-ordination duties and other statutory requirements of those involved.
- 5.3.3 No fee will be payable for permit variations initiated by the Permit Authority, unless, at the same time, the activity promoter seeks variations which are not the result of the circumstances causing the Permit Authority action. In that case a variation fee would be payable (subject to standard exemptions).
- 5.3.4 If the Permit Authority has been unable to contact the activity promoter to discuss the variation they should record that and send a message electronically.

#### 5.4 *Suspension, Postponing, Revoking or Cancellation of Permits by the Permit Authority*

##### 5.4.1 **Suspending or postponing an activity**

- 5.4.1.1 There is no mechanism in the TMA or Permit Regulations for formally suspending or postponing a permit, only for varying or revoking them.
- 5.4.1.2 If the Permit Authority intends to suspend or postpone an activity for which it has already granted a permit but which it intends should happen at a later date, it will use the permit variation provisions, as described in 5.3, to enforce a change of dates. The promoter would then need to submit a further variation application relating to the new dates and any other requirements; in this case, the fees for the variation would be waived.
- 5.4.1.3 If the need for suspension is due to the activity promoter failing to comply with the permit terms or conditions, then the Permit Authority may use the provisions in Permit Regulation 18 which is similar to s66 of NRSWA.
- 5.4.1.4 If the Permit Authority considers that an activity promoter is failing to comply with the terms or conditions of a permit imposed under Permit Regulation 10 or 13, and the Permit Authority considers a condition has been breached, it may invoke the powers in Permit Regulation 10(4) which are incorporated into the Permit Scheme.

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#### **5.5 Cancellling a Permit or Withdrawing a Permit Application**

- 5.5.1 If a promoter wishes to cancel a permit or withdraw a permit application for which they have no further use, they should use the cancellation notice containing the relevant number (see Technical Specification for EToN for more details). There is no cancellation fee.
- 5.5.2 Where a permit has been issued, the fee for the cancelled permit will normally remain payable. However, if a permit is cancelled through no fault of the promoter, the fee will be credited back to the promoter.
- 5.5.3 An activity promoter will be committing an offence if it works or continues to work after cancelling a permit.

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## 6 CONFLICT WITH OTHER LEGISLATION AND LEGAL LIABILITY

- 6.1 The Permit Authority will try to ensure that any conditions applied to a permit do not conflict with the activity promoter's obligations under separate legislation. The Permit Authority's intention is that an activity promoter should not be put in a position where they cannot escape being in breach of either permit conditions or other relevant legislation.
- 6.2 The activity promoter should bring such conflicts or potential conflicts to the attention of the Permit Authority as soon as is practicable. The Permit Authority will be responsible for resolving the issue with the other body or bodies concerned, e.g. Environmental Health officials, and amending the permit conditions accordingly.
- 6.3 The applicant will be liable for all actions, costs, claims, demands, charges and expense arising out of any activity covered by Permit Scheme, including those which may arise out of, or be incidental to, the execution of the works.
- 6.4 Part 8 of the Regulations provides for the disapplication of certain sections of NRSWA, details of which are contained in section 2.12 of this document.

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### 7 DISPUTE RESOLUTION

#### 7.1 Introduction

- 7.1.1 In the event of any dispute between the Permit Authority and an activity promoter in connection with any matter related to the Permit Scheme, the parties shall use every endeavour to resolve the matter between them. However, it is recognised that this may not always be possible.

#### 7.2 Appeals Procedure

- 7.2.1 If agreement cannot be reached locally on any matter arising in relation to the Permit Scheme, the dispute will be referred for review on the following basis:
- 7.2.2 Where the Permit Authority and the activity promoter(s) consider that the issues involved in the dispute are relatively straightforward, the matter will be referred to impartial members of SEHAUC (that is those not representing parties directly involved in the dispute) for review. That review should take place within five working days from the date of referral. The Permit Authority will accept the result as binding.
- 7.2.3 If the Permit Authority and the activity promoter(s) involved in the dispute consider the issues are particularly complex, HAUC (UK) will be asked to set up a review panel of four members - two utilities and two street authorities. One of the four persons will be appointed as Chair of the panel by the HAUC (UK) joint chairs. Each party must make all relevant financial, technical and other information available to the review panel. The review would normally take place within ten working days from the date on which the issue is referred to HAUC (UK). The Permit Authority will accept the conclusions of the review panel as binding.

#### 7.3 Adjudication

- 7.3.1 If agreement cannot be reached by the procedure above, the dispute can be referred to independent adjudication. Adjudication within the Permit Scheme will only be used if both parties agree in relation to the matter under dispute, that
- the decision of the adjudicator is deemed to be final; and
  - the costs of adjudication will be borne equally unless the adjudicator considers that one party has presented a frivolous case, in which case costs may be awarded against them.
- 7.3.2 Where the adjudication route is followed, the Permit Authority and the activity promoter(s) will apply to the joint chairs of HAUC (UK), who will select and appoint the independent adjudicator from a suitable recognised professional body.

#### 7.4 Arbitration

- 7.4.1 Disputes relating to matters covered by NRSWA may be settled by arbitration, as provided for in s99 of NRSWA:

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### 8 PERMIT FEES

#### 8.1 Introduction

- 8.1.1 The Permit Authority has set its permit fees in accordance with the Permit Regulations and statutory guidance published by DfT in July 2008.

#### 8.2 Fee Levels

- 8.2.1 The figures for permit and PAA fees for different categories of streets and activities can be found on the Permit Authority website.
- 8.2.2 The figures for Permit variation fees for activities on both major and minor roads can be found on the Permit Authority website.
- 8.2.3 In addition to the permit variation fee itself, if a permit variation moves an activity into a higher/chargeable fee category, the activity promoter must pay the difference in permit fee as well as the permit variation fee. This includes the situation where a variation moves an activity from a zero fee category on a minor road to a category where a fee is payable.
- 8.2.4 No fee is payable if a permit variation is initiated by the Permit Authority.

#### 8.3 Waived and Reduced Fees

- 8.3.1 There is the opportunity for an activity promoter to take advantage of various discounts that are offered as part of the Permit Scheme and these discounts relate both to the PAA and the permit.
- 8.3.2 An activity promoter will not be charged a fee;
- Where the permit is for a standard, minor or immediate activity on a minor road;
  - if the promoter is a highway authority or is carrying out WFRP \*on behalf of a highway authority (see example in 8.3.4);
  - if a permit is deemed to be granted because the authority had failed to respond to an application in the time required;
  - if a permit variation is initiated by the Permit Authority;
  - where the Permit Authority has to revoke a permit through no fault of the activity promoter there will be no charge for a replacement application. If there is no subsequent replacement application, the original fee will be credited to the promoter;
  - there will be no fee applicable for the maintenance of fire hydrants carried out by the fire service or a contractor designated by the fire service to carry out this work on their behalf, and,
  - Where the works are Diversionary Works as a result of a Major Highway or Bridge works, Initiated by the Highway Authority, as described in s86 of NRSWA
- 8.3.3 When the Permit Authority is satisfied that applications for two or more permits (including PAAs)
- are submitted within 3 working days of each other, beginning with the day on

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\* (WFRP) Works for Road Purposes as defined in NRSWA s86(2)

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which the first permit application is received; and

- are the result of the applicant or applicants working together so as to produce the least impact for users of the streets.

8.3.4 There will be a reduction of 30% for the permit, and when submitted, the PAA fee for all applicants working together. All applications, including the first to be received, must indicate that they are being submitted together (within 3 days).

Examples of such situations could be;

- Where a promoter submits several permit applications at the same time for activities which are part of the same project but which are carried out in more than one street. The term "project" does not cover area-wide activities but activities of a scale which could be carried out in one street, but which happens to cover two or more streets;
- Where several activity promoters working within the same site submit applications at the same time. The primary promoter will require a permit with full information about the activities, and the other promoters will also require a permit each so that the authority knows who is working there. If in these circumstances one of the promoters is the highway authority, the utility company promoters will be eligible for the reduced fee.

#### *8.4 Fee Reviews*

8.4.1 The Permit Authority will review fees annually. Any significant variation between the expected income and expenditure in operating the Permit Scheme will be dealt with in accordance with review arrangements in effect at the time.

8.4.2 The Permit Authority is committed to adjust fees if either a surplus or deficit exists between costs and income. 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. If a sustained surplus/ deficit occur the fee levels will be adjusted accordingly.

8.4.3 The outcome of annual fee reviews will be displayed on the Permit Authority's public website.

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### 9 OVERRUN CHARGING SCHEME

- 9.1. The Permit Authority intends to run a scheme for overrun charging under s74 of NRSWA to operate alongside the Permit Scheme. The requirements for overrun charging are set out in regulations made under s74 of NRSWA (the s74 regulations as amended by the permit regulations). The procedure is contained in Chapter 16 of the Permits Code of Practice.
- 9.2. Where the permit Authority has reason to believe that overrun charges are being avoided by mis-use of permit phases, it will treat a subsequent permit application as an illegitimate use of phases (see 5.2.3).
- 9.3. Activities carried out by an activity promoter on behalf of a highway authority or by the highway authority themselves are not subject to s74 overrun charges. However, under the Permit Scheme, promoters of such activities will be required to follow the same procedures as promoters who are statutory undertakers. Key Performance Indicators (KPIs), as described in section 13, provide an indication of performance in relation to overrunning works.



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### 10 USE OF SANCTIONS FOR PERMIT OFFENCES

#### 10.1 Introduction

10.1.1 The Permit Authority will work with activity promoters to try to minimise congestion and disruption on the road network. As far as possible this will be done on a collaborative basis, involving consultation, dialogue and improvement, but the Permit Authority recognises that at times it may need to invoke sanctions to ensure the effective management of activities on the network. There are three types of sanction available to the Permit Authority:

- an intervention power;
- criminal proceedings; and
- power to revoke a permit

#### 10.2 Intervention and Remedial Action Powers

10.2.1 Part 5 of the Regulations empower the Permit Authority to issue a notice requiring remedial action within a set timeframe if an activity promoter is working without a permit or in breach of any conditions. The Permit Authority will use this power if it considers it necessary.

10.2.2 The remedial action could include removing the activity, remedying the breach of conditions or discontinuing any obstruction. The Permit Authority will set out in the notice the reasonable steps the promoter must take and the timeframe.

10.2.3 Where a promoter does not take the remedial action within the specified timeframe, the Permit Authority will take such steps as it considers appropriate to achieve the outcome in the notice, and, where the promoter is a statutory undertaker, may recover any reasonable costs.

#### 10.3 Permit Offences

10.3.1 The Permit Regulations create two offences which apply to statutory undertakers, these are:

- where a statutory undertaker carries out registerable activities on the street without a permit, except where immediate activities to take place before a permit is issued, provided a permit is applied for within 2 hours of the activity starting; and;
- where a statutory undertaker carries out registerable activities on the street in a way that contravenes any of the conditions attached to a permit, or the conditions that are applied to an immediate activity before a permit is issued for those activities.

10.3.2 These offences can be dealt with by the giving of a Fixed Penalty Notice (FPN) (see section 11) or by prosecuting the offences through the courts, following the usual processes. The Permit Authority in each case elects whether an offence will be dealt with by FPN or through the courts.

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#### 10.4 Working without a Permit

- 10.4.1 Once a permit has been issued it will be placed on the permit register. This will include permits deemed to have been granted. The Permit Authority will check against the register for the existence of a valid permit.
- 10.4.2 A permit will cover a specified activity at a specified location at specified times. These are referred to in the scheme as the permit terms and any activity that contravenes them is an offence. All elements of the activity must be completed within the dates on the permit – this includes not only the opening of the street, but all the ancillary work as well, such as stockpiling materials, setting up and disbanding traffic management and clearing the site.
- 10.4.3 A permit cannot be varied once it has expired. If a variation is necessary the activity promoter must apply in good time (see 5.2.5).
- 10.4.4 A promoter can begin immediate activities without a permit but must apply for a permit within two hours of starting work to avoid committing an offence. Once issued, the promoter is bound by the terms of the permit and its conditions. This supersedes the terms in the application and any previous generic conditions set by the authority. For further details of conditions for immediate activities refer to section 4.11.

#### 10.5 Breaching the Conditions of a Permit

- 10.5.1 The conditions included in a permit will be recorded in the Permit Scheme permit register. If a permit is varied a new permit will be issued and any new conditions will be included and recorded. The Permit Authority will seek to ensure that conditions are precise so that both the Permit Authority and the activity promoter can easily check performance on site against the approved conditions.
- 10.5.2 Standard conditions will apply to immediate activities for the period before a permit is issued. These standard conditions will be posted on the Permit Authority website where they can be accessed by promoters. Following discussions with the activity promoter, the Permit Authority may decide to impose specific conditions for individual immediate activities before a permit is issued. These will be recorded on the register against the reference number given to those activities.

#### 10.6 Revoking a permit

- 10.6.1 Regulation 10(4) of the Permit Regulations provides a power to revoke a permit where it appears to the Permit Authority that the conditions included in a permit have been breached. The Permit Authority will use this power where it considers it appropriate but before doing so will discuss the situation with the activity promoter. The Permit Authority's policy in relation to the use of this power is set out in 5.4.

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#### *10.7 Permit Authority's Policy on the Use of Sanctions*

10.7.1 Decisions on the prosecution of alleged offences are for the Permit Authority and each offence will be dealt with individually. Prosecution will not necessarily be the preferred option, the Permit Authority may take a decision to give a Fixed Penalty Notice in respect of a criminal offence or consider other courses of action depending on the seriousness and persistence of offences.

10.7.2 The Permit Authority will pursue the following policies on how sanctions will be employed. The steps will be followed as set out below, at the Permit Authority's discretion, with reference to the Traffic Management Permit Scheme (England) Regulations 2007.

10.7.2.1 For persistent offender or individual serious offences The Permit Authority will normally give a FPN but may choose to prosecute the offence through the courts, in accordance with regulations 19 and 20 of the Permit Regulations

10.7.2.2 For offences: where it is possible for some corrective action to be taken.

If a noncompliance occurs, a notice may be issued under regulation 18(1) proposing the reasonable steps to be taken within a defined timeframe.

If action is not taken within the timeframe given in the notice, or subsequently agreed timeframe, the Permit Authority under regulation 18(3) of the Permit Regulations will take actions as appropriate to the original noncompliance at the cost of the undertaker

10.7.2.3 For offences where it is NOT possible for some corrective action to be taken, an FPN will be given at the Permit Authority's discretion.

#### *10.8 Other NRSWA Offences*

10.8.1 Any offences relating to sections of NRSWA which run in parallel to permit schemes will continue to apply. These include offences relating to reinstatements, overrunning and failure to send appropriate notices.

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### 11 FIXED PENALTY NOTICES

#### 11.1 *Introduction*

11.1.1 The Permit Regulations provide for FPNs for permit schemes. The Permit Authority intends to use FPNs in conjunction with this Permit Scheme

11.1.2 These permit regulations provide for two offences to become fixed penalty offences. This means that they can be dealt with by FPNs, although prosecution through the Magistrates' Courts remains an option for the Permit Authority.

11.1.3 FPNs apply only to statutory undertakers and not to highway authorities, but the Permit Authority will monitor highway activities to ensure equal treatment across promoters. Situations will be recorded where highway activities would have been subject to a FPN, had they been carried out by an undertaker. The Permit Authority will use electronic FPNs where possible because they can be processed more easily, but other methods will be used if necessary. An example of a FPN form is in the permit regulations.

#### 11.2 *Payment of the fixed penalty notice*

11.2.1 Part B of the FPN sets out the methods by which the penalty may be paid. The permit regulations schedule 1 gives more information about the arrangements for payment.

#### 11.3 *Giving an FPN*

11.3.1 The process for giving an FPN is in Chapter 18 of the Permits Code of Practice

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### 12 RELATED MATTERS

#### 12.1 *Road Closures and Traffic Restrictions*

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

12.1.2 **There are two procedures;**

- Where urgent action is needed the Permit Authority as traffic authority may issue a 'temporary notice' imposing a short-term closure or restriction. Prior notice is not necessary.

The notice is limited to 21 calendar days if there is a danger to the public or risk of serious damage to the road, independent of street works -a leaking gas main, for example. It can be extended by one further notice.

The notice is limited to five calendar days if there is no risk of danger or damage.

- In less urgent cases the traffic authority may make a 'temporary order', which may remain in force for up to 18 months. This is limited to six months for footpaths, bridleways, cycle tracks and byways open to all traffic.

12.1.3 A temporary notice and a temporary order may provide that restrictions have effect only when traffic signs are lawfully in place. This will help limit traffic disruption where activities progress along a length of road.

12.1.4 In extraordinary circumstances, the Road Traffic Act 1991 s49(4A), allows the police to suspend designated street parking places temporarily to prevent or mitigate traffic disruption, or danger to traffic. This could prove useful to activity promoters carrying out emergency works.

12.1.5 When a notice or order has been made, the activity promoter must comply with the requirements of the Permit Authority as the traffic authority and the police for the closure of the road.

12.1.6 S76 of NRSWA allows for traffic authorities to recover the costs of issuing temporary notices or making TTROs. Upon receipt of an application for a TTRO, the Permit Authority can provide utilities with the estimated cost. Invoices will be itemised, for example:

- cost of the order;
- advertising in local papers;
- administration fees.

12.1.7 There may also be charges made for erecting and maintaining the on-site notices that are required.

#### 12.2 *Maintenance of Undertakers' Apparatus*

12.2.1 Undertakers have a duty, under s81 of NRSWA and the Streetworks (Maintenance) Regulations 1992, to maintain apparatus in the street to the reasonable satisfaction of the Permit Authority as the street authority, having regard for the safety and convenience of traffic, the structure of the street, and integrity of apparatus in it. Bridge, sewer and transport authorities also have an interest, so far as any land, structure or apparatus they own is concerned.

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- 12.2.2 Most undertakers have statutory obligations to maintain their networks -quite apart from which, they must maintain systems in efficient working order to properly discharge their safety and service obligations to their customers.
- 12.2.3 Thus the Permit Authority and all promoters have a shared interest in the proper maintenance of apparatus in the street.
- 12.2.4 The Permit Authority will report any apparatus in an unsatisfactory condition quickly and accurately to the apparatus owner, including the level of severity of the problem. The owner must respond and carry out any necessary remedial works within the reasonable timescales agreed with the Permit Authority as the street authority.
- 12.2.5 The Permit Authority as street authority will follow s81 of NRSWA, the Streetworks (Maintenance) Regulations 1992, chapter 19.2 of the Code of Practice for Permits and any subsequent revisions, when dealing with undertakers' apparatus requiring maintenance.
- 12.3 *Working Near Rail Tracks*
- 12.3.1 Particular attention must be given to the possible effects of activities taking place at or in the vicinity of level crossings. Promoters planning activities in such locations must refer to Appendix C of the Code of Practice for Permits published in March 2008 or as subsequently amended, which sets out Network Rail's requirements.
- 12.4 *Vehicle Parking at Street and Road Works*
- 12.4.1 This is not safety advice. The Code of Practice on Safety at Street Works and Road Works should always be consulted.
- 12.4.2 When activity promoters require the presence of a vehicle at the activity site they should refer to the guidance in chapter 19.4 of the Permits Code of Practice. Particular consideration should be given to the effect any vehicle will have when assessing the impact of the activity using the disruptive effect score in Appendix G of the Permits Code of Practice.
- 12.5 *Storage of Materials*
- 12.5.1 Activity promoters and the Permit Authority must take care to place materials so that they do not cause an obstruction to road users. This is one of the factors that the Permit Authority will take into account when making decisions on permits. This is especially important if materials are stored away from the activity site but still within the highway boundaries. The storage must have its own permission from the Highway Authority if it is separate from the activity site, and this should be referenced in the permit application for the activity.
- 12.6 *Apparatus Belonging to Others*
- 12.6.1 There may be other apparatus where activities are planned and under s69 of NRSWA, those carrying out activities must ensure that the owners of that apparatus are able to monitor the activity and that requirements to take reasonable steps to protect the apparatus are followed. Failure to do so is a criminal offence.

## **The South East Permit Scheme**

### *12.7 Assessing the Impact of Activities*

- 12.7.1 All activities in the highway have a disruptive effect on traffic. An assessment of that effect is part of the process of applying for a permit.
- 12.7.2 When applying for a permit for major works over 10 days duration, where the relevant traffic flow information is available to promoters via the Permit Authority website, a disruption effect score as defined in Appendix G of the Permits Code of Practice is required.

### *12.8 Environmental Issues*

- 12.8.1 Activity promoters are strongly advised to liaise with the authority's arboriculture consultants and other environmental officials along with any necessary borough or district council officers when drawing up their proposals. This should ensure that wherever possible, and at reasonable cost, their requirements can be met.
- 12.8.2 A promoter considering burying plant and apparatus that is currently above ground should contact any other utility with similar apparatus to see whether it wishes to share the underground facility.

### The South East Permit Scheme

## 13 KEY PERFORMANCE INDICATORS FOR THE PERMIT SCHEME

### 13.1 *Background*

- 13.1.1 One requirement for permit schemes is to ensure that authorities apply a consistent approach to all activities and activity promoters.
- 13.1.2 The Permit Authority for the Permit Scheme is also a promoter of its own maintenance and other highway and traffic activities in its role as highway authority.

### 13.2 *Parity of Treatment*

- 13.2.1 The Permit Authority will demonstrate parity of treatment for all activity promoters, particularly between undertakers and its own activities as highway authority. The issue of equal treatment is emphasised in the Guidance on the Network Management Duty introduced under the TMA.
- 13.2.2 Parity will be measured through KPIs. The Permit Authority will produce an annual set of KPIs that identify the treatment of individual activity promoters. These results will be published.

### 13.3 *KPIs for the Permit Scheme*

- 13.3.1 The Permit Authority will use any mandatory KPIs, in the DfT statutory guidance and others as required. These will be published on the Permit Authority web site to demonstrate parity of treatment of promoters across the scheme.
- 13.3.2 The results of these KPIs will be published on an annual basis but will be transparent and available to any activity promoter at other times. The KPIs will be provided and discussed at the quarterly co-ordination meetings and other regular meetings held with promoters.
- 13.3.3 The Permit Authority will make the KPI data available to Government and other regulatory bodies.



## The South East Permit Scheme

# 14 PERMIT SCHEME TRANSITIONAL ARRANGEMENTS

### 14.1 Introduction

The permit regime has been designed to follow closely the processes and timescales of the NRSWA noticing regime.

The Permit Authority will give a minimum of 4 weeks' notice of the commencement date to promoters and other interested parties after the order is made. The Permit Authority will facilitate discussions with all promoters during the introductory period to ensure that, as far as possible, issues are picked up early and problems dealt with quickly.

### 14.2 Transition from NRSWA Notices

- 14.2.1 The basic rules of transition will apply to all activities which would be covered by the scope of the Permit Scheme.
  - 14.2.1.1 The permit regime will apply to all activities which come within the scope of the Scheme at the changeover date where the administrative processes for those activities, such as application for a permit or PAA, start after the changeover date.
  - 14.2.1.2 Activities which are planned to start on site more than one month after the changeover date (for standard, minor and immediate activities) or three months after (for major activities) must operate under the permit scheme. This means that even if the relevant s54 or s55 NRSWA notice has been sent before the relevant changeover date, the promoter must cancel the NRSWA notice for that activity (or phase of activity) and apply for a permit. If the promoter has not substantially begun the activity (or phase of activity) by the time limit for the notice, 1 month or 3 months as appropriate, then again the promoter must cancel the NRSWA notice for that activity (or phase of activity) and apply for a permit.
  - 14.2.1.3 Any other activities which started under the notices regime and which will start on site less than one month or three months after the changeover date (according to activity category) will continue under that regime until completion.
- 14.2.2 Given the advanced notice of the changeover there should be few activities where these rules will create difficulties. Activities co-ordinated in the run-up to the imposition of a restriction under s58 or s58A of NRSWA might be such a situation. In those few cases, the Permit Authority will discuss the situation with the promoters concerned to work out a practical way of dealing with the activities.

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### Appendix A - Glossary

Activity, activity promoter	Covers both utilities' street works and highway authorities' own works. See Promoter.
Additional street data ("ASD")	Additional Street Data ("ASD") refers to other information about streets held on the NSG concessionaire's website alongside the NSG.
Bank Holiday	As defined in section 98(3) of NRSWA
Bar hole	A bar hole is used to detect and monitor gas leaks as described in the code of practice for permits.
Breaking up (the street)	Any disturbance to the surface of the street (other than opening the street).
Bridge, Bridge authority	As defined in section 88(1)(a) of NRSWA
BS7666	British Standard number 7666 relating to gazetteers.
Code of Practice for Permits	As published by Department for Transport March 2008.
Conditions Permit Conditions	Conditions applied by the Permit Authority as standard conditions or specific conditions to an individual permit. Contained in the EToNactivity conditions field
Day	In the context of the duration of activities, a day refers to a working day, unless explicitly stated otherwise.
DfT	Department for Transport.
Disability	As defined in section 105(5) of NRSWA, "section 28 of the Chronically Sick and Disabled Persons Act 1970 (power to define "disability" and other expressions) applies in relation to the provisions of this Part as to the provisions of that Act".
Emergency works	As defined in section 52 of NRSWA
EToN	Electronic Transfer of Notifications, the system defined in the Technical Specification for EToN for passing notices, permit applications, permits and other information between promoters and the Permit Authority.
Excavation	"Breaking up" (as defined above).
Fixed Penalty Notice (FPN)	As defined in schedule 4B to NRSWA,
Footpath	As defined in section 329 of the HA 1980,
Frontagers	A person or body occupying premises abutting the street.

### The South East Permit Scheme

HA 1980	The Highways Act 1980.
Highway	As defined in section 328 of the HA 1980, "highway means the whole or part of a highway other than a ferry or waterway".
Highway Authority	As defined in sections 1 and 329 of the HA 1980.
Highway works	"works for road purposes" or "major highway works".
Immediate activities	immediate activities are defined in 2.2.8
In	As defined in section 105(1) of NRSWA
Land	As defined in section 329 of HA 1980, "land includes land covered by water and any interest or right in, over or under land".
Local authority	As defined in section 270(1) of the Local Government Act 1972 and includes the Common Council of the City of London.
Main roads	All streets in reinstatement categories 0, 1 and 2 and those streets in categories 3 and 4 which are traffic sensitive for all or part of the time.
Maintainable highway	As defined in section 329 of HA 1980
Maintenance	As defined in section 329 of HA 1980, "maintenance includes repair, and "maintain" and "maintainable" are to be construed accordingly".
Major activities	Are defined in 2.2.8
Major highway works	As defined in section 86(3) of NRSWA
Minor activities	Are defined in 2.2.8
Minor roads	Streets in reinstatement categories 3 and 4 which are not traffic sensitive at any time.
National Grid Reference	Location reference using nationally defined eastings and northings The format in which it is presented must in all cases match that required by the Technical Specification for EToN.
National Street Gazetteer (NSG) –also referred to as Nationally Consistent Street Gazetteer	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.

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### The South East Permit Scheme

Network management duty	As stated in Part 2 of TMA.
NRSWA	New Roads and Street Works Act 1991.
Opening (the street)	Removing a lid or cover to a manhole, inspection chamber, meter box or other structure embedded in the street without any "breaking up" of the street.
Permit	The approval of a permit authority for an activity promoter to carry out activity in the highway subject to conditions.
Permit application	See section 3. 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 Co-ordination regime.
Permit Authority	A local highway authority or other "highway 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 under which permits for activities are sought and given.
Promoter	A person or organisation responsible for commissioning activities in the streets covered by the permit scheme. In the Permit Scheme promoters will be either statutory undertakers or the highway or traffic authority.
Protected street	are defined in NRSWA s61 (1)
Provisional Advance Authorisation (PAA)	The early provisional approval of activities in the highway. See 3.6.
Railway	As defined in section 105(1) of NRSWA, "railway includes a light railway other than one in the nature of a tramway".
Reasonable period	As defined in section 74(2) of NRSWA,
Registerable	Registerable activities correspond to street works or other descriptions of works that are required to be shown on the register in <i>The Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007</i> .
Reinstatement	As defined in section 105(1) of NRSWA, "reinstatement includes making good".
Relevant authority	As defined in section 49(6) of NRSWA,
Remedial work	Remedial works are those required to put right defects identified in accordance with the provisions of the Code of Practice for Inspections and the associated regulations.

### The South East Permit Scheme

Road	"Highway".
Road category	This means one of the road categories specified in Chapter S.1 of the code of practice entitled "Specification for the Reinstatement of Openings in Highways" dated June 2002, as revised or re-issued from time to time.
Road works	Works for road purposes.
SEHAUC	South East regional group of the Highway Authorities and Utilities Committee.
Sewer	Sewer as defined in the Water Industry Act 1991 " includes all sewers and drains (not being drains within the meaning given by this subsection) which are used for the drainage of buildings and yards appurtenant to buildings".
Sewer authority	As defined in section 89(1)(b) of NRSWA,
Special Engineering Difficulties (SED)	by virtue of section 63 of NRSWA,
Standard activities	Are defined in 2.2.8
Street	As defined in section 48(1) of NRSWA
Street authority	As defined in section 49(1) of NRSWA,
Street works	As defined in section 48(3) of NRSWA,
Street works licence	As stated in section 50(1) of NRSWA,
Terms Permit terms	The works promoter specified activity at the specified location at specified times executed in a specified way etc. as defined in a granted, deemed or varied permit
TMA	The Traffic Management Act 2004.
Traffic	As defined in section 105(1) of NRSWA, "traffic includes pedestrians and animals".
Traffic authority	As defined in section 121A of the Road Traffic Regulation Act 1984:
Traffic control	Any of the five methods of controlling traffic detailed in the Code of Practice "Safety at Street Works and Road Works".
Traffic flow	The number of vehicles using the particular street at specified times of the day and year, measured in accordance with DFT guidelines.

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### The South East Permit Scheme

Temporary Traffic Regulation Order	This means an Order made under section 1, 6, 9 or 14 of the Road Traffic Regulation Act 1984.
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.
Traffic sign	As defined in section 105(1) of NRSWA, "traffic sign has the same meaning as in the Road Traffic Regulation Act 1984"
Trunk road	As defined in section 329 of the HA 1980,
Type 1 (or 2, or 3) gazetteer	As defined in the British Standard BS7666.
Undertaker	As defined in section 48(4) of NRSWA,
Unique street reference number (USRN)	As defined in the British Standard BS7666.
Urgent activities	Are defined in 2.2.8
Working day	As defined in section 98(2) of NRSWA,
Works	Street works or works for road purposes.
Works clear	A notice under NRSWA s74(5C) following interim reinstatement.
Works closed	A under NRSWA s74(5C) following permanent reinstatement.
Works for road purposes	As defined in section 86(2) of NRSWA,

## The South East Permit Scheme

### APPENDIX B -PERMIT REGISTER

#### B.1 Introduction

The Permit Authority will maintain a register of each street covered by the Permit Scheme. The register will contain information about all registerable activities on those streets. The permit register will also include forward planning information about activities and other events which could potentially affect users of the streets and promoters of activities in those streets.

The Permit Authority will still retain a register under s53 of NRSWA for street information. This will cover those streets that are not part of the permit scheme, i.e. non-maintainable streets.

The Permit Authority will maintain the two registers in such a way that they can effectively be treated as one and information can be accessed seamlessly, where necessary, to aid the co-ordination of activities and to provide information to road users.

#### B.2 Form of Registers

The Permit Authorities permit register and street works registers will be kept on an electronic system and maintained against the same digital map base to ensure consistency between all holdings of street-related data. This common geographical dataset will be vector-based, nationally consistent, maintained and seamless, with changes published on a regular update cycle.

The Permit Authority will provide the Unique Street Reference Number (USRN) definitions and attribution as defined in BS7666, while the geometries will be recorded by referencing the road centreline objects in the digital map base. All data will follow the principles of the Digital National Framework.

#### B.3 Content of Registers

The permit register held by the Permit Authority will record:

- (i) copies of all Provisional Advance Authorisation (PAA), permit and permit variation applications submitted to the Permit Authority relating to activities in any street;
- (ii) copies of all permits and PAAsgiven by the authority, including conditions as well as all variations to permits and conditions including any permits "deemed" granted;
- (iii) copies of all revoked permits, refused PAAs and refused permits, together with the reasons for such refusals;
- (iv) copies of all notices, consents and directions served by a street authority under s58 or s58A of NRSWA;
- (v) copies of all notices served by a promoter under s58 and s58A of NRSWA;
- (vi) copies of all notices given under s74 of NRSWA;
- (vii) description and location of activities for which plans and sections have been submitted under Schedule 4 of NRSWA (streets with special engineering difficulties);
- (viii) particulars of notices given by any relevant authority under Schedule 4 of NRSWA;
- (ix) particulars of street works licences under s50 of NRSWA, including details of

### The South East Permit Scheme

conditions and changes of ownership and of any NRSWA notices or directions associated with those licences;

- (x) information under s70(3) and (4A) of NRSWA as to completion of reinstatements;
- (xi) particulars of apparatus notified to the street authority under s80(2) of NRSWA;
- (xii) every notice of works pursuant to s85(2) of NRSWA;
- (xiii) details of every street for which the Permit Authority is the street authority;
- (xiv) details of every street which is prospectively maintainable by the Permit Authority;
- (xv) details of every street of which the Permit Authority is aware over which the Permit Scheme would operate, which is a highway but for which it is not the highway authority;
- (xvi) details of every street which is a) a protected street; b) a street with special engineering difficulties; c) a traffic-sensitive street;
- (xvii) the road category of each street; and;
- (xviii) details of every street where early notification of immediate activities is required.
- (xix)

#### **B.4 Access to registers**

The Permit Authority will publish elements of their register's information on a public website in order that the information is available 24 hours a day, seven days a week, except for those occasional times when it will be unavailable due to upgrade and maintenance. Upgrading and maintenance will, wherever possible, be done outside normal office hours.

#### **B5 Restricted information**

Restricted information is anything certified by the Government as a matter of national security, or information which could jeopardise the promoter's commercial interests such as details of a contract under negotiation. The promoter must indicate restricted information on the relevant permit or PAA application. Restricted information will not be shown on the public websites.

#### **B.6 Retention of information**

Information about activities provided by means of or in relation to any permit application under the TMA (including for a PAA or permit variation) or notice under NRSWA will be retained on the register for at least six years after completion of the guarantee period of the activity referred to in the application or notice. Information about other activities will be retained on the register for at least six years after completion.



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### APPENDIX C -PAYMENT METHODS FOR PERMIT FEES AND FPNs

Utility companies will be required to pay fees for permits to the Permit Authority and may have to pay a penalty to the Authority if they receive a Fixed Penalty Notice (FPN) for a permit related offence. Although the Permit Authority will keep the permit fees and FPN penalties separate for accounting purposes it is expected that utility companies will use the same means of paying for both. In most cases utility companies will already have arrangements in place for payments to the Permit Authority in relation to NRSWA e.g. for inspection or for s74 overrun charges and these arrangements can be used for permit fees and FPNs provided there is transparency over precisely which permit or which FPN a payment is for.

Payment for permit fees and any FPN should be made by means specified by the Permit Authority at its co-ordination meetings;

When the use of electronic payment methods is the required method, if a utility company normally uses that method and there is a system failure, paying by an alternate option is possible by contacting the Finance Department of the Permit Authority.

The utility company must set up payment facilities, provide contact details and agree methods of payment with the Finance Department of the Permit Authority and clarify what arrangements for payment will apply.

It is important that the authority is informed which FPNs or permit fees are being paid. This will not only provide an audit trail but will also ensure that payments can be made quickly and with the minimum of queries.

Therefore:

- For BACS, the utility company must support payment with details of the Permit or FPN numbers covered by the payment and the amount being paid in relation to each (including, for FPNs, the discounted or full amount).
- For any alternate option the payment must be accompanied by a list of the Permit or FPN numbers covered by the payment and the amount being paid in relation to each (including, for FPNs, the discounted or full amount).

**END OF DOCUMENT**

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## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order gives effect to the West Berkshire Council Permit Scheme.

The West Berkshire Council Permit Scheme is designed to control the carrying out of works in specified streets in West Berkshire by imposing an obligation to obtain a permit from West Berkshire Council before undertaking the works.

*Article 3* gives effect to the permit scheme, which will come into effect on 1st March 2015. The permit scheme referred to in this article is set out in the Schedule to the Order.

*Article 4* applies Part 8 of the Traffic Management Permit Scheme (England) Regulations 2007 (which makes provision for the disapplication and modification of enactments in relation to specified works in specified streets) to the specified works and specified streets within the West Berkshire Council Permit Scheme.

A copy of the West Berkshire Council Permit Scheme is deposited and can be inspected at the offices of West Berkshire Council at the Council Offices, Market Street, Newbury, Berkshire RG15 5LD and is available to inspect on the Council's website at <http://info.westberks.gov.uk/index.aspx?articleid=29943>