

January 2012



Booklet of supporting documents to the Department for Transport's consultation on amending the Traffic Management Act 2004 - revising the permit scheme approval process (for local highway authorities in England)



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# Booklet of Supporting Documents to Consultation

To assist consideration of the proposals set out in this consultation document this booklet contains extracts from documents that accompany consideration of 'permit schemes'. Full copies of the existing documents can be found on the Department for Transport website at [www.dft.gov.uk](http://www.dft.gov.uk) . Following consideration of the consultation responses it is likely that all the supporting documentation will need revision and updating.

The booklet contains the following:

Commentary

Appendix A: Part 3 of the Traffic Management Act 2004.

Appendix B: draft Legislative Reform Order – (copy also included in the consultation document).

Appendix C: draft statutory instrument to amend the Traffic Management Permit Scheme (England) Regulations 2007

Appendix D: Initial Impact Assessment on changes (copy also included in the Consultation document).

Appendix E: TMA 2004 Guidance Note - Statutory Guidance for Local Highways Authorities in England: Preparation of Permit Schemes (2nd Edition) - extract illustrating amendments.

Appendix F: Traffic Management Act 2004 Code of Practice for Permits – Procedures and Guidance - extracts illustrating amendments

Appendix G: Traffic Management Act 2004: Permit Schemes Decision Making Process - extracts illustrating amendments

Full current version of Appendix E to G can be obtained from the Department's website at [www.dft.gov.uk](http://www.dft.gov.uk).

The Permit Fees Guidance introduced in July 2008 is not included here, but can be obtained from the above website. Some revisions to the wording of this document may be required but, as there is no intention to amend the fees or the Regulations relating to fees, any changes will be minor.

Please note: all these documents set out here are either in draft or abridged form (they are not legal documents) and are subject to amendments following consideration of the consultation responses and related work being undertaken by the HAUC (UK) Working Group.

# Commentary

## The 'permit scheme'

This booklet contains extracts from documents that support the consideration and development of 'permit schemes' by local highway authorities under Traffic Management Act 2004 (TMA).

Permit schemes enable authorities in England to provide 'permits' to applicants (mainly utility companies), who wish to undertake street works, allowing for better management of the road network for which authorities are responsible.

Currently the TMA and the related Regulations (2007), requires that where a local transport authority seeks to introduce (or vary an existing) permit scheme they must apply for approval to do so to the Secretary of State. The proposal detailed in the consultation document (which relates to England only) is for the removal of this requirement. Such a change will require amendments to legislation and it is proposed that any changes will be introduced using a Legislative Reform Order (LRO). Details on the use and applicability of an LRO can be found in Chapter 3 of the consultation document.

The consultation period on this proposed change will run for 12 weeks from 31 January 2012 to 25 April 2012.

You are invited to respond to the questions set out in a separate word document (as Addendum C) on the Departments website at [www.dft.gov.uk](http://www.dft.gov.uk) - the full consultation document can also be found here. Completed questionnaires can be emailed to: [Permit.Schemes@dft.gsi.gov.uk](mailto:Permit.Schemes@dft.gsi.gov.uk) or printed and returned by post to:-

Ann Morley

Permit Scheme Approval Process Consultation  
Zone 3/26  
Department for Transport  
Great Minster House  
33 Horseferry Road  
London SW1P 4DR

Following the closure of this consultation on 25 April 2012, the Department for Transport will consider all of the representations submitted and publish a summary of them on our website at [www.dft.gov.uk](http://www.dft.gov.uk) within three months of the consultation closing. This will be followed by the Department's conclusions, which will also be published on our website at [www.dft.gov.uk](http://www.dft.gov.uk) .

If you would like a copy of this document in an alternative formats (Braille, audio CD, etc) please contact:

Claudette Bagalo  
Department for Transport, Great Minster House, Zone 5/23  
33 Horseferry Road, London SW1P 4DR

# Appendix A - Traffic Management Act

## Part 3 - extract for reference purposes

### Transport Management Act

### Part 3 Permit Schemes

#### Meaning of “permit scheme”

(1) Any reference in this Part to a permit scheme is a reference to a scheme which is designed to control the carrying out of specified works in specified streets in a specified area.

(2) A permit scheme may (in particular) include provision—

- (a) for or in connection with requiring a permit to be obtained before specified works are carried out (including provision as to the persons who are required to obtain permits),
- (b) for or in connection with the issue of permits (including provision with respect to applications for permits, provision for cases in which there is to be an entitlement to the issue of a permit and provision with respect to cases in which permits are to be deemed to be issued),
- (c) as to cases in which specified works may be carried out without a permit,
- (d) for or in connection with the imposition of conditions which are to apply in relation to the carrying out of specified works (including provision for or in connection with the attachment of such conditions to permits),
- (e) for or in connection with the review or variation of permits or such conditions (including provision with respect to applications for such variations).

(3) In this section “specified” means specified, or of a description specified, in a permit scheme.

#### 33 Preparation of permit schemes

(1) A local highway authority, or two or more such authorities acting together, may prepare and submit to the appropriate national authority a permit scheme.

(2) The appropriate national authority may direct a local highway authority, or two or more such authorities acting together, to prepare and submit to the national authority a permit scheme which takes such form as the national authority may direct.

(3) The appropriate national authority, in its capacity as a highway authority, may prepare a permit scheme.

(4) The Secretary of State, in his capacity as the person with responsibility for the management and control of streets in the Royal Parks, may prepare a permit scheme in respect of any such streets.

- (5) Those preparing permit schemes—  
(a) must comply with permit regulations, and  
(b) must have regard to any guidance which may be issued by the appropriate national authority.

#### 34 Implementation of local highway authority permit schemes

(1) This section applies where a permit scheme is prepared and submitted to the appropriate national authority (“the authority”) in accordance with section 33(1) or (2).

(2) The authority may approve the scheme with or without modifications.

(3) Where it approves the scheme with modifications, references in subsections (4) and (5) to the scheme are to be read as references to the scheme as so modified.

(4) The scheme shall not have effect unless the authority by order gives effect to it.

(5) An order under subsection (4)—

(a) must set out the scheme and specify the date on which the scheme is to come into effect, and

(b) may (in accordance with permit regulations) include provisions which disapply or modify enactments to the extent specified in the order.

#### 35 Implementation of other permit schemes

(1) This section applies where a permit scheme is prepared in accordance with section 33(3) or (4).

(2) The scheme shall not have effect unless the appropriate national authority by order gives effect to it.

(3) An order under subsection (2)—

(a) must set out the scheme and specify the date on which the scheme is to come into effect, and

(b) may (in accordance with permit regulations) include provisions which disapply or modify enactments to the extent specified in the order.

#### 36 Variation and revocation of permit schemes

(1) The appropriate national authority may by order vary or revoke any permit scheme which for the time being has effect.

(2) An order under this section—

(a) may relate to one or more permit schemes,

(b) may vary or revoke any order under section 34 or 35, or any order previously made under this section,

(c) may (in accordance with permit regulations) include provisions which disapply or modify enactments to the extent specified in the order.

#### 37 Permit regulations

(1) The appropriate national authority may by regulations (“permit regulations”) make provision with respect to the content, preparation, submission, approval, operation, variation or revocation of permit schemes.

(2) Permit regulations may—

- (a) set out procedural provisions with which those preparing permit schemes must comply,
- (b) set out standard provisions which may or must be included in a permit scheme,
- (c) make provision as to the publicity to be given to permit schemes.

(3) Permit regulations may make provision—

- (a) with respect to any of the matters mentioned in section 32(2) (including provision as to the conditions or types of conditions which may be imposed by virtue of section 32(2)(d)),
- (b) for the purpose of limiting the streets, or type of streets, which may be the subject of a permit scheme.

(4) Permit regulations may make provision—

- (a) as to the criteria to be taken into account in the case of decisions with respect to the issue, review or variation of permits or decisions with respect to the imposition, review or variation of conditions,
- (b) for or in connection with the determination, or facilitating the determination, of disputes (including provision with respect to the appointment of persons to determine, or facilitate the determination of, disputes),
- (c) for or in connection with appeals (including provision with respect to the appointment of persons to hear appeals),
- (d) as to the action which may be taken if works are carried out without a permit or if any conditions are not complied with,
- (e) for or in connection with the creation, in prescribed cases (including prescribed cases where works are carried out without a permit or in breach of any conditions), of a criminal offence triable summarily and punishable with a fine not exceeding level 5 on the standard scale,
- (f) for or in connection with excluding or limiting the liability of prescribed undertakers in prescribed cases.

(5) Provision under subsection (4) in respect of adjudication may not be made without the consent of the Lord Chancellor.

(6) Permit regulations may make provision for or in connection with the giving of fixed penalty notices (including, in particular, provision applying Schedule 4B to the New Roads and Street Works Act 1991 (c. 22), with or without modifications) in relation to any offence created by permit regulations.

(7) Permit regulations may make provision for or in connection with the payment of a fee in respect of any one or more of the following—

- (a) an application for a permit,
- (b) the issue of a permit,
- (c) an application for the variation of a permit or the conditions attached to a permit,
- (d) the variation of a permit or the conditions attached to a permit.

(8) Provision made under subsection (7) may include provision as to—

- (a) the amount or maximum amount of any fee,
- (b) cases in which fees are not to be payable or are to be repaid,
- (c) cases in which fees may be discounted,
- (d) the time and manner of making payment of fees,
- (e) the application of sums paid by way of fees.

(9) In making provision under subsection (7), the appropriate national authority must try to ensure, so far as is reasonably practicable, that the fees payable in connection with permit schemes do not exceed such costs in connection with permit schemes as may be prescribed.

(10) For the purposes of subsection (9), the national authority may rely on such estimates (including estimates with respect to the average costs of highway authorities or particular descriptions of highway authority) as the national authority thinks fit.

(11) Permit regulations may make provision—

(a) for or in connection with the creation and maintenance of registers of permits,

(b) with respect to access to information contained in any such registers (including provision restricting such access),

(c) with respect to the keeping of accounts, and the preparation and publication of statements of account, relating to permit schemes.

(12) Permit regulations may make provision for or in connection with permitting a highway authority, or two or more such authorities acting together, to prepare a permit scheme in respect of streets in a particular area which are maintainable highways notwithstanding that the authority, or those authorities, are not the highway authority for all or any of those streets.

(13) Permit regulations may set out provisions—

(a) which disapply or modify enactments, and

(b) which are to or may apply in the case of permit schemes.

(14) Nothing in subsections (2) to (13) is to be taken as affecting the generality of subsection (1).

### 38 Crown application

(1) This Part and any provisions made under it bind the Crown (but do not affect Her Majesty in her private capacity or in right of Her Duchy of Lancaster or the Duke of Cornwall).

(2) Nothing in subsection (1) is to be construed as authorising the bringing of proceedings for a criminal offence against a person acting on behalf of the Crown.

### 39 Interpretation of Part 3

(1) In this Part—

“the appropriate national authority” means—

(a)

the Secretary of State, as respects England, and

(b)

the National Assembly for Wales, as respects Wales;

“condition” is to be construed in accordance with section 32(2);

“enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978 (c. 30));

“fixed penalty notice” means a notice offering a person the opportunity of discharging any liability to conviction for an offence by payment of a penalty;

“highway authority” and “local highway authority” have the same meaning as in the Highways Act 1980 (c. 66);

“maintainable highway” has the same meaning as in Part 3 of the New Roads and Street Works Act 1991 (c. 22);

“permit” is to be construed in accordance with section 32(2);

“permit scheme” is to be construed in accordance with section 32;

“permit regulations” is to be construed in accordance with section 37;

“prescribed” means prescribed, or of a description prescribed, by regulations made by the appropriate national authority;

“Royal Park” means any park to which the Parks Regulation Act 1872 (c. 15) applies (see sections 1 and 3 of the Parks Regulation (Amendment) Act 1926 (c. 36));

“street” means a street (within the meaning of Part 3 of the New Roads and Street Works Act 1991)—



(a)  
which is a maintainable highway, or  
(b)  
which is situated in a Royal Park;  
“street works” has the meaning given by section 48(3) of the New Roads and Street Works Act 1991;  
“undertaker” has the same meaning as in Part 3 of that Act;  
“works” means—

(a)  
prescribed street works, and  
(b)  
such other works or activities as may be prescribed,  
but activities may not be prescribed under paragraph (b) unless they are, or correspond to,  
activities which are regulated or controlled by the Highways Act 1980.

(2) An order or regulations under this Part—  
(a) may make different provision for different cases or different areas,  
(b) may include incidental, supplemental, consequential or transitional provision or savings.

(3) A power to make an order or regulations under this Part is exercisable by statutory instrument.

(4) The first permit regulations may not be made by the Secretary of State unless a draft of them has been laid before and approved by a resolution of each House of Parliament.

(5) Subject to that, a statutory instrument containing regulations under this Part made by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament.

# Appendix B - Draft Legislative Reform Order

## STATUTORY INSTRUMENTS

2012 No.

## REGULATORY REFORM

Made - - - - 2012

Coming into force - - 2012

The Secretary of State for Transport (“the Secretary of State”) makes the following Order, in exercise of the powers conferred by section 1 of the Legislative and Regulatory Reform Act 2006<sup>(1)</sup> (“the 2006 Act”).

For the purposes of section 3(1) of the 2006 Act, the Secretary of State considers that, where relevant, the conditions under section 3(2) are satisfied.

Agreement to the making of the Order has been given by the National Assembly for Wales in accordance with section 11(1) of the 2006 Act and by the Welsh Ministers in accordance with section 11(2)(c) of the 2006 Act.

The Secretary of State has consulted in accordance with section 13(1) of the 2006 Act.

The Secretary of State has laid a draft of this Order and an explanatory document before Parliament in accordance with section 14(1) of the 2006 Act.

Pursuant to section 15 of the 2006 Act, the affirmative resolution procedure (within the meaning of Part 1 of the 2006 Act) applies to the making of this Order.

Pursuant to section 17(2) of the 2006 Act, the draft of this Order has been approved by resolution of each House of Parliament after the expiry of the 40 day period referred to in that provision.

PART 1 - General provisions - Citation, commencement and extent

—(1) This Order may be cited as the Legislative Reform (Permit Schemes) Order 2012. This Order comes into force on the day after the day on which it is made.

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<sup>(1)</sup> 2006. c.51. . Sections 1, 4, 11, 13, 24 and 27 of that Act have been amended by S.I.2007/1388.

This Order extends to England and Wales.

## Interpretation

In this Order—

“the 2004 Act” means the Traffic Management Act 2004<sup>(2)</sup>; and

“the Permit Scheme Regulations” mean the Traffic Management Permit Scheme (England) Regulations 2007<sup>(3)</sup>.

## PART 2 - Amendments to Part 3 of the 2004 Act

### Amendments to the 2004 Act

Part 3 of the 2004 Act is amended as set out in Articles 4 to 9.

### Preparation of permit schemes

—(2) Section 33 (preparation of permit schemes) is amended as follows.

For subsection (1), substitute—

“(1) A local highway authority in England, or two or more such authorities acting together, may prepare a permit scheme.

(1A) A local highway authority in Wales, or two or more such authorities acting together, may prepare and submit to the Welsh Ministers a permit scheme.”

For subsection (2) substitute—

“(2) The Welsh Ministers may direct a local highway authority in Wales, or two or more such authorities acting together, to prepare and submit to them a permit scheme which takes such form as the Welsh Ministers may direct.”

### Implementation of local highway authority permit schemes

After section 33, insert—

“Implementation of local highway authority permit schemes: England

33A—(1) This section applies to a permit scheme prepared by a local highway authority in England, or two or more such authorities acting together, under section 33(1).

(2) The scheme shall not have effect in the area of the local highway authority unless the authority gives effect to it by order.

(3) An order under subsection (2)—

(a) must set out the scheme and specify the date on which the scheme is to come into effect; and

(b) may (in accordance with permit regulations) include provisions which disapply or modify enactments to the extent specified in the order.”

—(3) Section 34 of the 2004 Act (implementation of local highway authority permit schemes) is amended as follows.

In subsection (1)—

after “prepared” insert “by a local highway authority, or two or more such authorities acting together, in Wales,”;

for “appropriate national authority (“the authority”)” substitute “Welsh Ministers”; and for “33(1)” substitute “33(1A)”.

In subsection (2) for “authority” substitute “Welsh Ministers”.

In subsection (3), for “it approves” substitute “the Welsh Ministers approve”.

In subsection (4), for “the authority by order gives” substitute “the Welsh Ministers by order give”.

In the heading, at the end insert “: Wales”.

### Variation and revocation of permit schemes

For section 36 (variation and revocation of permit schemes), substitute—

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<sup>(2)</sup> 2004 c.18.

<sup>(3)</sup> S.I. 2007/3372.

“36.—(1) A local highway authority in England may by order vary or revoke a permit scheme prepared by them which for the time being has effect under section 33A(2).

(2) The Secretary of State may direct a local highway authority in England to revoke such a permit scheme by an order under subsection (1).

(3) An order made by a local highway authority under subsection (1) may vary or revoke an order made by the authority under section 33A(2), or an order previously made by the authority under subsection (1).

(4) The Welsh Ministers may by order vary or revoke any permit scheme which for the time being has effect by virtue of an order made by them under section 34(4) or 35(2).

(5) An order under subsection (4) may vary or revoke an order made by the Welsh Ministers under section 34(4) or 35(2), or an order previously made under subsection (4).

(6) The Secretary of State may by order vary or revoke any permit scheme which for the time being has effect by virtue of an order made by the Secretary of State under section 35(2).

(7) An order under subsection (6) may vary or revoke an order made by the Secretary of State under section 35(2), or an order previously made under subsection (6).

(8) An order under subsection (4) or (6) may relate to one or more permit schemes.

(9) An order under this section may (in accordance with permit regulations) include provisions which disapply or modify enactments to the extent specified in the order.”

#### Permit regulations

—(4) Section 37 (permit regulations) is amended as follows.

In section 37(1)—

for “appropriate national authority” substitute “Secretary of State”;

omit “submission, approval,”; and

at the end insert “prepared by local highway authorities in England under section 33(1) or by the Secretary of State under section 33(3) or (4)”.

After subsection (1) insert—

“(1A) The Welsh Ministers may by regulations (“permit regulations”) make provision with respect to the content, preparation, submission, approval, operation, variation or revocation of permit schemes prepared by local highway authorities in Wales under section 33(1A) or (2) or by the Welsh Ministers under section 33(3).”

#### Interpretation of Part 3

—(5) Section 39 (interpretation of Part 3) is amended as follows.

In subsection (1), in paragraph (b) of the definition of “the appropriate national authority”, for “National Assembly for Wales”, substitute “Welsh Ministers”.

In subsection (3) after “power” insert “of the Secretary of State or the Welsh Ministers”.

### PART 3 - Transitional provisions

#### Transitional Provisions

—(6) This article applies to a permit scheme prepared by a local highway authority in England which has effect immediately before the date on which this Order comes into force by virtue of an order under section 34(4) of the 2004 Act made by the Secretary of State.

On and after that date, the scheme is to be treated as if it had effect by virtue of an order made by the authority under section 33A(2) of that Act.

Signed by authority of the Secretary of State for Transport

Parliamentary Under Secretary of State

## EXPLANATORY NOTE (This note is not part of the Order)

### This Order amends Part 3 of the Traffic Management Act 2004 (“the 2004 Act”).

Article 4 amends section 33 of the 2004 Act (preparation of permit schemes) to remove the requirement on local highway authorities to submit a permit scheme to the Secretary of State for approval following preparation of such a scheme. It also removes the power for the Secretary of State to direct a local highway authority to prepare and submit a permit scheme to the Secretary of State for approval, but retains this power for the Welsh Ministers. It also substitutes a new power for local highway authorities, acting alone or together, to prepare a permit scheme.

Article 5 inserts a new section 33A into the 2004 Act (implementation of local authority permit schemes: England) which makes provision for how local highway authority permit schemes are to come into effect. Article 33A(2) provides that permit schemes will not have effect in the area of a local highway authority unless given effect to by an order of that authority. Section 33A(3) provides for the content of such orders.

Article 6 removes the requirement for the Secretary of State under section 34(2) of the 2004 Act (implementation of local authority permit schemes) to approve a submitted local highway authority permit scheme. It also removes the Secretary of State’s power under section 34(4) to give effect to a permit scheme by order, but retains the requirement that permit schemes from Welsh local highway authorities are submitted, approved and given effect to by the Welsh Ministers.

Article 7 substitutes a new section 36 of the 2004 Act (variation and revocation of permit schemes) providing for the removal of the power of the Secretary of State under section 36(1) to vary or revoke a local highway authority permit scheme and substituting a new power for local highway authorities to vary or revoke their own permit schemes by order and to vary or revoke an order which gives effect to a permit scheme. The new section 36 also introduces a power for the Secretary of State to direct a local highway authority to revoke its own permit scheme by order. The requirement that permit schemes from Welsh local highway authorities are varied or revoked by order of the Welsh Ministers is retained, as is the right for the Secretary of State or Welsh Ministers to vary or revoke permit schemes made by them under section 33(3) or 33(4).

Article 8 Amends section 37 of the 2004 Act which provides the power to make regulations in relation to permit schemes. Section 37(1) is amended to remove the power for the Secretary of State to make regulations concerning the submission and approval of permit schemes. A new sub-section 1(A) provides for Welsh Ministers to continue to make regulations with regards to, amongst other things, the submission and approval of permit schemes.

Article 9 amends section 39 of the 2004 Act (interpretation) by changing the definition of appropriate national authority as respects Wales. It also amends section 39(3) to clarify that a power to make orders or regulations by the Secretary of State or Welsh Ministers is exercisable by statutory instrument.

Article 10 deals with transitional provisions and provides that any permit schemes which were approved by the Secretary of State shall be treated as if they had been given effect to by an order of the relevant local highway authority. A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is annexed to the Explanatory Memorandum which is available alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).

# APPENDIX C

## Draft Statutory Instrument - highways, England

Made - - - 2012  
Laid before Parliament 2012  
Coming into force - - 2012

The Secretary of State makes the following Regulations in exercise of the powers conferred by section 37 of the Traffic Management Act 2004<sup>(4)</sup>.

### Citation and commencement

These Regulations may be cited as the Traffic Management Permit Scheme (England) (Amendment) Regulations 2012 and shall come into force on [ ] 2012.

### Preliminary

The Traffic Management Permit Scheme (England) Regulations 2007<sup>(5)</sup> are amended as follows.

### Amendment to regulation 2 (Interpretation)

Regulation 2 is amended as follows—

In the definition of “Permit Authority” omit the words “which have submitted, or intend to submit, that permit scheme to the Secretary of State under section 33(1) or (2) of the 2004 Act (preparation of permit schemes)” and substitute “which have made, or intend to make, an order giving effect to a permit scheme under section 33A(2) of the 2004 Act (implementation of local authority permit schemes: England);”; and

after the definition of “provisional advance authorisation”, insert—

““publish” means make available to the public at large or any section of the public in whatever form and by whatever means;”.

### Amendment to regulation 3 (Consultation for new permit schemes)

Regulation 3(1) is amended as follows—

omit the word “submitting” and substitute “making an order giving effect to”;

omit the words “to the Secretary of State”; and

for “33” substitute “33A(2)”.

### Amendment to regulation 4 (Procedural requirements for submitting new permit schemes)

—(7) Regulation 4 is amended as follows—

in the heading, omit the word “submitting”;

renumber regulation 4 as 4(1);

omit the words “When submitting a permit scheme under section 33(1) or (2)” and substitute “When an order giving effect to a permit scheme is made under section 33A(2)”;

omit the words “provide the Secretary of State with” and substitute “publish”; and

after the word “information”, insert “before the scheme comes into effect”.

After regulation 4(1) (as so renumbered) insert—

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<sup>(4)</sup> 2004 c.18.

<sup>(5)</sup> S.I. 2007/3372

“4(2) Twelve months after the date on which a Permit Scheme comes into effect and every twelve months thereafter, the Permit Authority shall conduct an evaluation of the Permit Scheme and publish the results of that evaluation as soon as reasonably practicable”.  
Amendment to regulation 5 (Varying and revoking permit schemes at the Permit Authority’s request)

Regulation 5 is amended as follows—

in the heading, omit the words “at the Permit Authority’s request”; and  
omit the words “asking the Secretary of State to vary or revoke” and substitute “varying or revoking”.

Amendment of regulation 17 (Notification of permit scheme)

—(8) Regulation 17(1) is amended as follows—

omit the words “Secretary of State” and substitute “Permit Authority”; and  
omit “34(4)” and substitute “33A(2)”.

Regulation 17(2) is amended as follows—

omit the words “Secretary of State” and substitute “Permit Authority”; and  
for “36” substitute “36(1)”.

Transitional Provision

The amendments to the Traffic Management Permit Scheme (England) Regulations 2007 made by these regulations shall not apply until the Legislative Reform (Permit Schemes) Order 2012<sup>(6)</sup> comes into force.

Name

Parliamentary Under Secretary of State

Date

Department for Transport

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<sup>(6)</sup> SI number to be inserted when the Order is made.

# EXPLANATORY NOTE

## (This note is not part of the Regulations)

These Regulations amend the Traffic Management Permit Scheme (England) Regulations 2007 (“the 2007 Regulations”). The effect of these Regulations is to remove from the 2007 Regulations the requirement for the Secretary of State to approve and give effect by order to local highway authority permit schemes and instead allow for local highway authorities to give effect by order to their own permit schemes. The amendments made to the 2007 Regulations are consequential upon amendments made by the Legislative Reform (Permit Schemes) Order 2012 to Part 3 of the Traffic Management Act 2004 (“the 2004 Act”).

Regulation 3 amends regulation 2 of the 2007 Regulations (interpretation). It amends the definition of “Permit Authority” to omit words relating to the submission of permit schemes to the Secretary of State. It also inserts a new definition of “publish” which relates to the amendments to regulation 4 of the 2007 Regulations.

Regulation 4 amends regulation 3 of the 2007 Regulations, concerning consultation for new permit schemes. It removes the reference to submission of a scheme to the Secretary of State, and replaces it with a reference to the new power of a permit authority in section 33A(2) of the 2004 Act to make an order giving effect to a permit scheme.

Regulation 5 amends regulation 4 of the 2007 Regulations dealing with procedural requirements for new permit schemes. The amendments retain the requirement to publish certain information on a permit scheme but remove the reference to submitting a scheme to the Secretary of State. This is replaced with a requirement to publish the information when an order giving effect to a permit scheme is made by a permit authority.

A new regulation 4(2) is inserted requiring a permit authority to evaluate its permit scheme twelve months after it commenced, and every twelve months thereafter, and to publish the results of that evaluation as soon as reasonably practicable.

Regulation 6 amends regulation 5 of the 2007 Regulations to remove the references to the Secretary of State’s powers of variation and revocation.

Regulation 7 amends regulation 17 of the 2007 Regulations to require notification following a permit authority making an order as opposed to the Secretary of State.

Regulation 8 contains a transitional provision which provides that the amendments made by these Regulations shall not apply until the Legislative Reform (Permit Schemes) Order 2012 has come into force.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is annexed to the Explanatory Memorandum which is available alongside the instrument on [www.legislation.gov.uk](http://www.legislation.gov.uk).



# Initial Impact Assessment (Consultation) - Appendix D

## Initial Impact Assessment

<p>Title: <b>Local Highway Authority Permit Scheme – amendment to approval process under Part 3 of 2004 Traffic Management Act</b></p> <p>Lead department or agency: Department for Transport</p> <p>Other departments or agencies: Nil</p>	<table border="1"><thead><tr><th data-bbox="927 553 1458 629">Impact Assessment (IA)</th></tr></thead><tbody><tr><td data-bbox="927 629 1458 705">IA No: DfT Internal</td></tr><tr><td data-bbox="927 705 1458 741">Date: 11/07/2011</td></tr><tr><td data-bbox="927 741 1458 777">Stage: Consultation</td></tr><tr><td data-bbox="927 777 1458 813">Source of intervention: Domestic</td></tr><tr><td data-bbox="927 813 1458 848">Type of measure: Primary legislation</td></tr><tr><td data-bbox="927 848 1458 967">Contact for enquiries: ann.morley@dft.gsi.gov.uk</td></tr></tbody></table>	Impact Assessment (IA)	IA No: DfT Internal	Date: 11/07/2011	Stage: Consultation	Source of intervention: Domestic	Type of measure: Primary legislation	Contact for enquiries: ann.morley@dft.gsi.gov.uk
Impact Assessment (IA)								
IA No: DfT Internal								
Date: 11/07/2011								
Stage: Consultation								
Source of intervention: Domestic								
Type of measure: Primary legislation								
Contact for enquiries: ann.morley@dft.gsi.gov.uk								

## Summary: Intervention and Options

### **What is the problem under consideration? Why is government intervention necessary?**

The Traffic Management Act 2004 (TMA) introduced 'permit schemes', by which local highways authorities could develop a scheme to provide 'permits' to those who wished to undertake street works. Permit Schemes provide for better management of the highway and can result in reducing congestion.

For schemes to be effective authorities have to submit an application and obtain formal approval from the Secretary of State. Such approval does not directly effect either local authority traffic management or costs to utilities seeking permits and the Government considers

### **What are the policy objectives and the intended effects?**

Devolving this power from Central government to local government – enabling authorities in England to take the final decision to implement a scheme – would remove an unnecessary requirement for central government to intervene in local decisions, it would also provide for authorities being able to give effect to locally developed schemes.

Overall the change would reduce authority costs as there would no longer be a need to prepare documents for assessment and submission to the Secretary of State. It will also reduce the cost of the assessment process to the Secretary of State.

**What policy options have been considered, including any alternatives to regulation?  
Please justify preferred option (further details in Evidence Base)**

Do nothing.

or

Option - Amend primary and secondary legislation to remove the requirement that permit schemes are submitted by local highway authorities to the Secretary of State, removing the power of the Secretary of State give effect to approving or varying such schemes (there is a power retained for the Secretary of State to revoke in exceptional circumstances) and giving local transport authorities the power to develop, vary and revoke their own schemes by order.

**Will the policy be reviewed?** It will be reviewed. **If applicable, set review date:** 4/2017

**What is the basis for this review?** Not applicable. **If applicable, set sunset clause date:** Month/Year

<b>Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?</b>	Yes
--	-----

SELECT SIGNATORY Sign-off For consultation stage Impact Assessments:

**I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.**

Signed by the responsible

SELECT SIGNATORY:

Date: .....

## Summary: Analysis and Evidence Policy Option 1

### Description:

Amend primary and secondary legislation to remove the requirement that permit schemes are submitted by local highway authorities to the Secretary of State.

Price Base Year	PV Base Year	Time Period	Net Benefit (Present Value (PV)) (£m)		
			2012	Years 10	Low: £0.552

COSTS (£m)	Total Transition (Constant Price)	Average Annual (excl. Transition)	Total Cost (Present Value)
Low	0	0	0
High	0	0	0
Best Estimate	0	0	0

#### Description and scale of key monetised costs by 'main affected groups'

There are no direct additional costs as the policy removes an administration burden on both local authorities and central government, and we assume no additional charge to utility companies.

#### Other key non-monetised costs by 'main affected groups'

N/A

BENEFITS (£m)	Total Transition (Constant Price)	Average Annual (excl. Transition)	Total Benefit (Present Value)
Low	0	£0.07	£0.552
High	0	£0.08	£0.675
Best Estimate	0	£0.07	£0.614

#### Description and scale of key monetised benefits by 'main affected groups'

The benefits for this policy are from the administrative time saved by DfT for approving schemes. We have assumed around 4 applications per year but types of applications - such as joint or common schemes from metropolitan authorities could involve longer time spent.

#### Other key non-monetised benefits by 'main affected groups'

There are likely to be benefits to the wider public where permit schemes are introduced and the road network is more effectively managed. Time savings associated with ministerial decisions are not monetised.

Key assumptions/sensitivities/risks	Discount rate (%)	3.5
-------------------------------------	-------------------	-----

It is assumed it costs the Department £8,676 in wage costs to approve an application for a scheme. Office costs are assumed to be zero. It is expected that 4 applications will be received in 2012 and there will be an increase on one application per year over the appraisal period. Regulations remain in place to ensure fees charged by authorities remain as set and there is also a safeguard in place to allow the Secretary of State the ability to direct and authority to revoke unworkable schemes. Sensitivity analysis is provided to reflect that different types of application may require more or less work than estimated in the average case.

Direct impact on business (Equivalent Annual) £m):	In scope of	Measure qualifies
Costs: n/a      Benefits: n/a      Net: n/a	Yes/No	IN/OUT

## Enforcement, Implementation and Wider Impacts

What is the geographic coverage of the policy/option?	England				
From what date will the policy be implemented?	01/04/2012				
Which organisation(s) will enforce the policy?	n/a				
What is the annual change in enforcement cost (£m)?	n/a				
Does enforcement comply with Hampton principles?	No				
Does implementation go beyond minimum EU requirements?	No				
What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent)	Traded:	Non-traded:			
	n/a	n/a			
Does the proposal have an impact on competition?	No				
What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable?	Costs:	Benefits:			
	0	0			
Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price)	Micro	< 20	Small	Medium	Large
Are any of these organisations exempt?	No	No	No	No	No

## Specific Impact Tests: Checklist

- 7.1** Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.
- 7.2** Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

Does your policy option/proposal have an impact on...?	Impact	Page ref within IA
Statutory equality duties <sup>1</sup> <a href="#">Statutory Equality Duties Impact Test guidance</a>	No	n/a

<sup>1</sup> Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual

Economic impacts		
Competition <a href="#">Competition Assessment Impact Test guidance</a>	No	n/a
Small firms <a href="#">Small Firms Impact Test guidance</a>	No	n/a
Environmental impacts		
Greenhouse gas assessment	No	n/a
Wider environmental issues	No	n/a
Social impacts		
Health and well-being <a href="#">Health and Well-being Impact Test guidance</a>	No	n/a
Human rights <a href="#">Human Rights Impact Test guidance</a>	No	n/a
Justice system <a href="#">Justice Impact Test guidance</a>	No	n/a
Rural proofing <a href="#">Rural Proofing Impact Test guidance</a>	No	n/a
Sustainable development <a href="#">Sustainable Development Impact Test guidance</a>	No	n/a

## Evidence Base (for summary sheets) – Notes

**7.3** Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal. Please fill in References section.

## References

**7.4** Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

No.	Legislation or publication
	Traffic Management Act (2004)
	The Traffic Management Permit Scheme (England) Regulations 2007
	Statutory Guidance for Permits
	Code of Practice for Permits

+ Add another row

## Evidence Base

- 7.5** Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete **the Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).
- 7.6** The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

### Annual profile of monetised costs and benefits\* - (£m) constant prices

	Y0	Y1	Y2	Y3	Y4	Y5	Y6	Y7	Y8	Y9
Transition costs	0	0	0	0	0	0	0	0	0	0
Annual recurring cost	0	0	0	0	0	0	0	0	0	0
Total annual costs	0	0	0	0	0	0	0	0	0	0
Transition benefits	0	0	0	0	0	0	0	0	0	0
Annual recurring benefits	£0.035	£0.042	£0.049	£0.055	£0.060	£0.066	£0.071	£0.075	£0.079	£0.08
Total annual benefits	£0.035	£0.042	£0.049	£0.055	£0.060	£0.066	£0.071	£0.075	£0.079	£0.08

\* For non-monetised benefits please see summary pages and main evidence base section



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## Evidence Base (for summary sheets)

- 7.7** The Traffic Management Act (TMA) 2004 require, where local transport authorities choose to introduce a permit scheme, it to be submitted for assessment and approval by the Secretary of State before it can have effect by order made by the Department (in Wales, the approval of Welsh Assembly Government Ministers is required and this exercise does not impact on Wales where the process will remain the same). The Traffic Management Permit Scheme (England) Regulations 2007 also provide for submission and approval of a permit scheme to the Secretary of State.
- 7.8** The preferred policy option is to remove the need for local authorities to formally apply to the Secretary of State before operating permit schemes within their area. This will remove the burden on those authorities to prepare a prescribed set of documents and information to the Secretary of State, and remove the burden of the Secretary of State's to give formal approval before a scheme can come into force.
- 7.9** The ability of authorities to introduce schemes remains, and therefore both the permit regulations and statutory guidance are retained. This will ensure schemes continue to be developed and implemented as before.
- 7.10** Additionally it is proposed that details of schemes and an evaluation of them will be published on local authority websites to ensure greater transparency. Currently only LoPS (the London scheme) and Kent have been operating long enough to allow for formal evaluation. The LoPS scheme evaluation can be found on the site below and the Kent scheme will be placed on the Kent County Council website by the end of July.  
Evaluation of LoPS:

<http://www.londoncouncils.gov.uk/search.htm?cx=012816060298198299354%3Aulbaum7l6aw&cof=FORID%3A11&ie=UTF-8&q=Search...LoPS+report#1085>

- 7.11** The Secretary of State is considering retaining the power to revoke failing schemes.

## Problem under consideration

- 7.12** Currently a considerable amount of time is spent by the Department assessing permit applications received from local authorities. The Government is committed to localism and reducing bureaucracy. The removal of this layer in the development process for 'permit schemes' will not only save time it will also reduce the administrative burden on the Department. For these reason only one option has been developed – that of removing the approval process by the Secretary of State and transferring that role to local authorities.

## Policy Rationale

- 7.13** Part 3 of the Traffic Management Act empowers local highway authorities (and the Secretary of State and Welsh Ministers in their capacity as highway authority for certain roads) to prepare and implement permit schemes. Section 33 provides that a scheme prepared and submitted by a local highway authority can be implemented only after the Secretary of State (in England) or the Welsh Ministers (in Wales) has given effect to the proposed scheme by means of a statutory instrument. Schemes can also only be carried

by the same process. This constraint was considered necessary as part of TMA because permit schemes were an untested concept and it was felt necessary to hold some central control to prevent a large number of schemes coming into operation until the approach was proven.

- 7.14** Permit schemes have are now operational across London, Kent, Northamptonshire and most recently St Helens. Those schemes in operation long enough to evaluate their schemes (LoPS and Kent) appear to be delivering promising improvements (see above for scheme evaluation). A number of other authorities in England are developing proposals for their own schemes.
- 7.15** The Government is also pursuing an active policy of devolving powers and decision-making from Whitehall to local government. As a result, Ministers wish to remove the existing requirement for local highway authorities' permit scheme proposals for implementing or varying a scheme to be submitted to the Secretary of State. Instead, it would be for local highway authorities themselves to take the final decision on whether a scheme should go ahead (or be amended) in their area and to determine precisely what form any scheme should take. Once the authority had taken the decision to implement the scheme, or to vary it, it would give effect to that decision by order - there would no longer be a need for submission to the Secretary of State.
- 7.16** The Secretary of Sate will retain the existing power to make regulations about permit schemes. This will preserve a degree of consistency about how schemes operate and to provide some protections for the interests of utility companies. The Secretary of State proposes to retain the power to direct a local authority to revoke their scheme if the need arises, again providing protections for the utility companies.

## Assessment of costs and benefits

### Option 1 costs

- 7.17** There are no direct costs associated with developing this policy, as the proposal removes a burden on both the Department and Local Authorities.

### Option 1 benefits

- 7.18** The monetised benefits for this policy are around the administrative time saved by the Secretary of State for approving schemes.
- 7.19** Local Authorities will also save time by not submitting schemes to the Department. The Regulations do not allow for authorities to make a profit, above running costs, from the implementation of permit schemes – the proposed change will not alter this, as the Regulations remain unchanged. It is therefore unlikely that there will be direct cost savings to authorities so no amount has been included in the net present value. This does mean that cost savings to the Local Authorities will be passed on to applicants.
- 7.20** There are also likely to be non-monetised benefits to the wider public where permit schemes are introduced and the road network is more effectively managed, this has the potential to reduce congestion.
- 7.21** Currently the Department for Transport reviews each application, essentially carrying out 4 tests, these are:



- 7.22** Test 1: A test of the compliance of the proposed scheme with the requirements of relevant legislation and the Secretary of State's statutory guidance. We currently check that the scheme contains statements that enable us to conclude that all the requirements written in the legislation and statutory guidance have been met.
- 7.23** Test 2: A test to determine if the proposed permit fees are reasonable and adequately justified. The Secretary of State is required, under section 37 (9) of the Traffic Management Act 2004 (TMA), to ensure that Permit fees raised by proposed schemes do not exceed the prescribed costs of implementing the scheme.
- 7.24** Test 3: A test of whether the proposed scheme is likely to deliver value for money. This requires a basic appraisal of the costs and benefits of the scheme, demonstrating that the scheme, on the balance of probabilities, is likely to deliver net benefits to road users and wider society that exceed the additional costs of the scheme.
- 7.25** Test 4: Finally, DfT currently consider whether the scheme is deliverable in practice, and if it is therefore in the public interest to give effect to the scheme through legislation.
- 7.26** All of the above will no longer be carried by the Department and will result in time and money saved.
- 7.27** A break down of each task and approximate staff costs is listed below:
- Checking of permit application – 5 Days – HEO, Cost £445
  - Checking of cost benefit analysis – 15 Days – G7, Cost £2113
  - Checking of fees analysis – 15 Days – HEO, Cost £1335
  - Checking compliance, i.e. objectives met, consulted etc – 15 Days – HEO, Cost £1335
  - Legal analysis – 15 Days, G7, Cost £2113
  - Specialist input and clearance – 5 Days, HEO, Cost £445
  - Consideration of evidence and feedback from legal/economists – 5 Days – HEO, Cost £445
  - Drafting submission – 5 Days, HEO, Cost £445
  - Ministerial decision – 5 Days (unquantified)
- 7.28** This provides an estimate total cost per assessment of £8,676. Removing the requirement for this assessment process would therefore save approximately this amount, per case. This cost is a conservative estimate as cost savings associated with ministerial and private office staff time have not been quantified. It should be noted that there are variables within salary bands and different personal may be used over time (and straight salary not capitation rates have been used).
- 7.29** The number of additional applications is 9 applications made over the coming 2 years: this is based on conversations with local authorities. The certainty of all these 9 authorities or groups of authorities seeking to implement a scheme is high as they are already in scoping discussions with the Department and it is likely these applications would be come forward for approval over the next two years. With this information we have estimated there will be 4 applications in 2012, increasing by one each year for the following years.

- 7.30** Sensitivity analysis is undertaken to reflect the potential for different types of application to be submitted each year. Depending on their scale, they may incur higher/lower costs than the expected average (stated above). As such a range of cost figures is presented which allow for a +/-10% difference from average cost figures.
- 7.31** In future years there is the potential for every highways authority in England to bring forward a scheme and introduction might increase as authorities learn best practice from those already in operation. This may mean that our estimate is very conservative. It is hoped that the consultation process will provide greater certainty on this issue, so that the Impact Assessment can be refined.
- 7.32** Authorities will benefit from a slight reduction of administration costs, by not having to submit formal documentation to the Secretary of State. Where groups of authorities bring forward schemes with central operations there may be economies of scale, but the main benefit for authorities will be greater control and certainty permit schemes are likely to provide, allowing them to manage their budgets with greater predictability, for example in the recruitment in staff needed to operate permit schemes.
- 7.33** This impact assessment supports the consultation process from which further evidence is sought, additional evidence will be used to enhance and refine the final impact assessment. At this stage the assumptions used are based on the best information available.
- 7.34** If the evidence used proves largely correct there is minimal risk to the costs and benefits shown, and the costs / assumptions are based on evidence of the review and assessment process since its introduction, and are therefore the assumptions made are considered to be robust.
- 7.35** There are considered to be minimal risks to the costs and benefits shown in this impact assessment.
- 7.36** Potential costs to utilities, which we cannot quantify, should the introduction of schemes be brought forward are assumed not to change in the absence of DfT checking and approval of permit schemes.
- 7.37** The ending of DfT's checking, analysis and approval is assumed not to lead to additional local authority processes and governance costs.

## Scheme implementation and evaluation

- 7.38** It would be for highway authorities to develop scheme proposals and implementation plans (in consultation with street works undertakers and other interested parties). The Government's expectation is that local authorities shall have a robust evaluation plan built into any proposed scheme. Local authorities are required to vary or revoke failing schemes where they fail to meet the benefits expected. The evaluation undertaken by authorities would need to set out the evidence that will be collected to undertake evaluation, setting out pre-permit scheme benchmarks against which the comparison would be made.

## Annexes

- 7.39** Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

## Annex 1: Post Implementation Review (PIR) Plan

**7.40** A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

<p><b>Basis of the review:</b> [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review , or there could be a political commitment to review (PIR)];</p> <p>The Government's expectation is that a robust evaluation plan will be built into schemes, as the evaluation plan would be an integral part of the scheme authorities would need to adhere to that plan in order to comply with permit regulations.</p>
<p><b>Review objective:</b> [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]</p> <p>The objective of any scheme evaluation would be to assess the extent to which the schemes objectives (as stated in the scheme) are being met.</p>
<p><b>Review approach and rationale:</b> [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]</p> <p>It is for the highway authority to propose suitable methodologies for evaluating their scheme. Individual scheme evaluation would inform the Government's view as to the overall effectiveness of the legislative change.</p>
<p><b>Baseline:</b> [The current (baseline) position against which the change introduced by the legislation can be measured]</p> <p>Baseline positions should be set as part of the individual authorities' evaluation plans.</p>
<p><b>Success criteria:</b> [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]</p> <p>Success criteria should be set out as part of individual authorities' evaluation plans.</p>
<p><b>Monitoring information arrangements:</b> [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]</p> <p>Monitoring information arrangements should be set out as part of individual authorities' evaluation plans.</p>
<p><b>Reasons for not planning a review:</b> [If there is no plan to do a PIR please provide reasons here]</p> <p>Not applicable.</p>

# Appendix E: TMA 2004 Guidance Note - Statutory Guidance for Local Highway Authorities in England: Preparation of Permit Schemes (2nd edition) - Draft amended extract

This document is an extract and in draft form (it is not a legal document) and is subject to change and amendment following the consultation exercise and subsequent consideration of the responses.

## Background

Part 3 of the Traffic Management Act 2004 (“TMA”) (sections 32 to 39) and the Traffic Management Permit Schemes (England) Regulations 2007 [7] (“the Regulations”) are the pieces of legislation relevant to permit schemes in England. Separate regulations will apply to Wales.

Following the issuing of LRO dated xxxx this guidance previously issued in 2007 has been revised and these revisions are reflected across this and related guidance information. There are no changes to the fundamental nature of permit schemes or the provisions they may include.

LRO dated xxxx can be found on the DfT website at [www.dft.gov.uk](http://www.dft.gov.uk). Please note that these changes apply only to England - separate regulations apply to Wales and remain unchanged.

The Secretary of State retains two specific powers under the TMA 2004 as follows:

i) The power to make regulations concerning permit schemes - this will preserve a degree of consistency about how schemes operate and to provide protection for the interests of utility companies.

ii) The power to direct a local authority to revoke their scheme if the need arises - again providing protections for the utility companies.

It is only in respect of the above two retained functions that the Secretary of State for Transport should be considered as the “appropriate national authority” for the purposes of section 33(5) of TMA in respect of England,

In essence the Secretary of State no longer requires the submission for approval of any ‘permit scheme’ which are now developed and implemented at the discretion of the relevant national or local highways authority to act as the approver of such permit schemes retaining only the power to

This document is now the guidance issued by the Secretary of State for Transport for those national and local highway authorities preparing permit schemes in England. Those authorities are recommended to have regard to the guidance contained in this document to ensure they have considered all essential matters when considering developing and implementing a ‘permit scheme’. The separate guidance issued by the National Assembly for Wales as regards Wales remains unchanged.

## Outcomes of an implemented ‘Permit Scheme’

Permit schemes will replace the “notice system” under the New Roads and Street Works Act (NRSWA) whereby utility companies inform highway authorities of their intentions to carry out works in their areas. At least initially, it is likely that management and control of works on the roads in England will be undertaken through a permit scheme in some areas but a notices system in others. It is, therefore, the intention to encourage the use of similar concepts to the notices system in a number of key areas e.g. road categories, works categories etc. This will hopefully ensure consistency, and facilitate better coordination.

Permit schemes must comply with the requirements set out in the Regulations (2007) and updated as part of these amendments. In addition, this guidance should be followed to ensure, as far as possible, consistency of operation and common protocols between schemes and with areas where a notices system still applies. In this guidance, where the context requires for the preparation of permit schemes

“must” refers to a statutory requirement

“should” refers to things which are strongly recommended, especially for consistency between schemes and between promoters  
“may” refers to things which the authority preparing a permit scheme should consider whether or not to include

Should any permit scheme promoter decide they have a good reason for departing from this Guidance they will need to ensure that they are satisfied they have fully taken account of the requirements set out in the Regulations and their own order making powers before taking this step, preferably before going out to consultation.

A permit schemes will in future come into force at the date set out in the council order which gives formal effect to the operation of the scheme.

## Activities covered by permit schemes

One of the key principles of permit schemes is that they will treat all activities covered by a scheme on an equal basis. The present 2007 Permit Regulations provide for permit schemes to include both street works by statutory undertakers, as defined in NRSWA (this excludes street works licensed under s50 of NRSWA), and highway works, defined in s83 of NRSWA as works for road purposes. Although the term “works” is used generically in the Regulations, “activities” is used in this guidance to encompass both types of works and anticipates subsequent sets of regulations which may extend the scope of permit schemes to other activities on the street.

Authorities preparing permit schemes must include both highway and statutory undertakers’ works. All works comprising “registerable works” in terms of the 2007 Notices Regulations under NRSWA should be included. Authorities should design their schemes to ensure, as far as possible, parity of treatment between both types of works.

## Common elements with NRSWA notice system

As mentioned above, in order to facilitate working across local highway authority boundaries or in other places where permits and a NRSWA notice system may be operating side by side, it is important that authorities preparing permit schemes should use the same or equivalent definitions or requirements as are used in NRSWA notice system for:

## Registerable activities/works

Categories of activities/works (major, standard, minor and immediate activities/works);

Street gazetteers, including street referencing by means of Unique Street

Reference Number (USRN) and Associated Street Data (ASD)

Street reinstatement categories as defined in the NRSWA Reinstatement Specification

The distinction between main roads and minor roads, where such distinctions are relevant

Streets designated as protected, having special engineering difficulty or traffic sensitive

Under Regulation 39, authorities operating permit schemes must be set up to receive applications, issue notices and otherwise communicate electronically. It is envisaged that all such communications relating to works on the highway will in future be made using the Electronic Transfer of Notices (EToN) system. Permit Authorities should design their permit schemes to operate in a manner which complies with the EToN Technical Specification.

## Types of scheme

Authorities may operate a permit scheme for all or some of their works. Options could include, for example

require permits for all roads, including minor roads, each application scrutinised individually; or

require permits for all roads but with the permit applications on minor roads dealt with on an exception basis (i.e. the terms of the application are assumed to be acceptable and the permit is issued in such terms unless certain elements of an application trigger an alert which prompts the Permit Authority to scrutinise that application individually); or

require permits for main roads but use the revised NRSWA noticing regime on all other roads.

See Glossary for details of the distinction between main roads and minor roads.

However, it must be remembered that the Regulations do not allow permit schemes to apply to roads that are not maintainable highways – see Regulation 8(2).

The TMA allows an authority to operate a permit scheme over roads for which it is not the highway authority. Such a concept would normally be in the form of a joint permit scheme (see below). If an authority is considering any other arrangement involving another authority's roads, they will need to ensure agreement has been reached between all relevant parties.

## Joint Permit Schemes

A local highway authority can operate a scheme solely on roads in its area. Alternatively, several authorities may choose to operate a permit scheme over their combined areas. Such a scheme could be administered either by a single authority acting on behalf of all the authorities or with each authority retaining responsibility for running the scheme within their boundaries.

In the case of a joint scheme there should have been clear agreement reached before any scheme is implemented controlled and fees apportioned. It is particularly important that the relevant authorities appoint a person to be responsible for financial accounting in relation to such a scheme, capable of issuing the relevant certificates under Regulation 26(5). Additionally, each authority should ensure agreement to run the scheme is approved by council order and continues to individually meet their network management duty requirements whilst operating a joint permit scheme.

## Common permit schemes

“Common” permit schemes (in contrast to joint permit schemes) refer to where a number of authorities in an area or region develop a common scheme which has a single set of “rules” but which each participating authority applies independently to their own roads, subject, of course, to normal cross boundary liaison and co-operation, each participating authority will need to. XXXX?

Permit Authorities may consider it appropriate to co-operate on the consultation on the scheme, not least because many of the consultees will probably be the same. In doing so they must ensure that all the persons that must be consulted under Regulation 3 for each of the participating authorities are included and that each authority gives appropriate consideration to the results of the consultation in relation to their own proposed operation of the common scheme.

Notwithstanding any such co-ordination and co-operation, each Permit Authority should separately demonstrate that they are in a position to operate a scheme



for their roads in accordance with the requirements of the Traffic Management Act and the Regulations, ideally in a manner compatible with this guidance.

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

A key element of controlling or managing activities is knowing accurately where the activities are to take place – in which street and where in the street. There is already a nationally consistent street gazetteer system for identifying streets that is used under NRSWA whereby each street has a Unique Street Reference Number (USRN). Permit schemes should provide for the same system to be used, along with the Associated Street Data linked to those streets. USRNs can refer to a whole street (as identified on the ground) or, if the street is long, to part of a street between significant junctions. Permit schemes should provide that a “street” refers to that length of road associated with a single USRN, i.e. to part of a whole street where a street is subdivided. It is the responsibility of the local highway authority (which will normally also be the Permit Authority, either individually or jointly with others) to create, maintain and publish street gazetteer data for all streets within their geographical area, whether or not they are the street authority for any particular street

The specification for street gazetteers is set out in British Standard BS 7666. The Standard specifies three levels of detail, the highest - level 3 - including the geospatial representation of the centre-line of the street as well as the end points. With the degree of attention expected to be given by authorities operating a permit scheme, accurate locations will often need the centre-line information if the impact of activities are to be properly assessed. It is therefore important that authorities wishing to run a permit scheme should therefore make sure that their street gazetteer is upgraded to level 3.

## Registers

Under Part 7 of the Regulations the permit authority must maintain a register in connection with their permit scheme containing information with respect to all registerable activities on those streets. Permit Authorities will still need to run a street works register required under s53 of NRSWA for any private streets and for any publicly maintained streets that are not included in the permit scheme. Part 7 is designed so that the permits register contains equivalent information to that which would be required on the street works register under NRSWA. In practice, therefore, the two registers should be run in parallel, or combined in such a way that information can be sought both on individual streets – including identifying whether or not they are in the permit scheme – and across the network.

Again, in the interests of consistency, Permit Authorities should ensure that all information held in permit registers is referenced to the Elementary Street Unit Identifier, and the Unique Street Reference Number (USRN) and that permit registers follow the street works equivalent by becoming GIS (Geographic Information System) based by June 2008. Also, for the reasons given in paragraph 8 of this Guidance, Permit Authorities should follow the requirements in the Technical Specification for EToN.

## Applications to operate a permit scheme

When developing a 'permit scheme' an authority should be able to demonstrate they have carried out a full consultation in relation to the scheme. Those stakeholders that must be consulted are set out in regulation 3. In addition to those specifically listed, the Permit Authority must consult such other persons as it considers appropriate. This should include persons identified as having an interest in any of the streets covered by the permit scheme in the Associated Street Data for those streets.

The permit scheme should also have build into its operation processes for assessing the impact and effectiveness of the scheme. Where appropriate the assessment process should be capable of providing information to feed into local Key Performance Indicators (KPIs) and authorities may wish to develop national KPIs that are capable of national comparison.

## Ceasing to run a permit scheme

If a Permit Authority decides that they wish to cease running a permit scheme, they should consult all interested parties.

## Permits

Regulation 9 states that where a permit scheme is in operation, the scheme must require that, except where an exception is explicitly provided for, any promoter of "specified works" (which should equate to registerable works or activities), who wishes to carry out such an activity in the street, must first obtain a permit from the Permit Authority. The permit allows the promoter to:

- carry out the specified activity;
- at the specified location; and
- between the dates shown and for the duration shown;

subject to any conditions that may be attached

In relation to location, the regulations require schemes to provide for a separate permit for each street. For consistency with NRSWA, a street for these purposes should correspond to a USRN. Permits schemes should also provide that where activities are carried out in more than one phase, e.g. separate interim and permanent reinstatements, each phase should be the subject of a separate permit.

Permits will only be valid from the start date to the end date of the permit. The start and end dates should be in calendar days, notwithstanding many aspects of permit schemes will operate in working days. This should ensure that there will be no ambiguity as to whether the permit is valid or not, even at weekends or on Bank Holidays. That will be important for the operation and enforcement of permit schemes given the penalties for working without a permit.

Regulation 9(2) allows the exceptions to be defined, so that certain activities can take place without requiring a permit. In order not to prevent activities that are necessary for emergency or urgent reasons, authorities should provide for the initial stage of immediate activities to be exempted from requiring a permit. But promoters will need to apply for a permit within 2 hours (see section on Permit for Immediate Activities in para 36).

The definition of “permit” in regulation 2 indicates that a permit must contain details of the duration for which the activity is authorised. That duration may coincide with the validity of the permit, i.e. the time between the start and end dates (inclusive) on the permit but does not have to do so. The duration may also coincide with the “reasonable period” for the purposes of section 74 of NRSWA but, again, does not necessarily do so, as Regulation 37(4) makes clear.

For consistency, Permit Authorities should design their schemes so that:

in relation to category 0, 1, 2, and traffic sensitive streets, the planned commencement date and finishing date for the activity are the start date and end dates respectively on the permit. The permit will not be valid before the start date on the permit and will cease to be valid once the end date has passed;

on category 3 and 4 streets that are not traffic sensitive, permit start and end dates should allow for flexibility in the start of the activity but once the activity is started it must be completed within the activity duration period specified in the permit. The starting window should be 5 working days for major and standard activities and 2 working days for minor activities. This is in line with the validity period within the notice system. Thus the start date on the permit will be the planned start date for the activity but the end date will need to allow for the possibility of the activity starting on the last day of the starting window, noting that the last of the starting window would then be day 1 of the activity duration.

If the permit allows working at weekends or on bank holidays, then the permit start and end dates should also accommodate that, even if those days do not count towards, say, the reasonable period for section 74 of NRSWA or the starting window.

Regulation 9(7) provides that the Permit Authority may establish different classes of permit. As previously mentioned it is the intention to encourage the use of similar concepts to the notice system and therefore four classes of permits should apply, reflecting the work categories in the notice system. Permit Authorities should establish the following in their schemes:

## 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.

Major Activity Permits would usually be required for the most significant activities on the highway. It is accordingly envisaged that Permit Authorities will need the most advance notice in relation to such activities, which is why it is expected that Permit Authorities will wish to incorporate the requirement to obtain a provisional advance authorisation (PAA) as part of the application process for a Major Activity Permit (see below). This should incorporate a minimum of three months advance notice of the proposed activity, to enable appropriate planning for any co-ordination measures. The application for a PAA should include a description of the proposed activity and the proposed start and end dates.

The promoter should be required to provide the final detailed information in support of its application for a permit nearer the time of the proposed start of the activity - at least 10 working days before the activity is due to commence. Such information will need to include the proposed start and end dates for the activity, which may be different from those in the provisional advance authorisation application, and if so, the applicant should be required to justify the change in their application.

## 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.)

When the promoter of the activity applies for this class of permit it should do so at least 10 working days before the activity is due to commence. Such an application should include a description of the proposed activity and the proposed start and end dates.

## Permit for Minor Activities

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

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

## Permit for Immediate Activities

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

Promoters of immediate activities should be required to apply for a permit within two hours of the activity starting. As mentioned above, the permit scheme should provide that activities of this nature may proceed without a permit, given their emergency or urgent nature, but that Permit Authorities should consider making such activities subject to conditions (this is specifically provided for in regulation 13). Permit conditions by definition will be specific to the activity to which the permit relates.

On the other hand, conditions which apply to activities which can be carried out without a permit should normally apply automatically to all such activities and such conditions should be generic in nature (although conditions which apply only in relation to specific and codifiable circumstances may still be appropriate). The requirement that the promoter submit an application for a permit within two hours of beginning work should be one such condition. It is intended that such an obligation will ensure that the activities are specifically authorised and made subject to appropriate, specific permit conditions as soon as is practicable.

There may be circumstances when it becomes apparent that specific conditions, going beyond the generic conditions, need to be applied to an immediate activity before a permit is granted. Permit Authorities may wish to design their schemes to allow for such specific conditions to be applied. If they do so they must ensure that arrangements are in place to ensure that any conditions are made known to the promoter in a timely manner and are accessible to other parties in a similar manner to permit conditions.

It should be noted that the above four classes of permit are more accurately eight classes, on the basis that each of the four classes separately relate to main roads, i.e. “category 0, 1, 2, and traffic sensitive streets”, and minor roads, i.e. “category 3 and 4 streets which are not traffic sensitive”, respectively. This is reflected in the recommended fee levels below.

## Provisional Advance Authorisation

Regulation 11 provides that permit schemes may require a provisional advance authorisation to be obtained as part of the application process for certain classes of permits. PAAs are envisaged as a means of enabling significant activities to be identified, coordinated and programmed in advance, by allowing activities to be provisionally “booked in” by the Permit Authority pending the Authority’s subsequent decision on whether, and with what conditions, to issue a permit for the activities. They are in many ways equivalent to advance notices issued under s54 of NRSWA. Permit Authorities should incorporate a requirement for PAAs in their schemes in relation to major permits but not in relation to other permits.

Where provisional advance authorisations are used, regulation 30(1) provides that a fee may be charged for the application for a permit, in addition to the fee which is charged for the issue of the permit. This reflects the importance of Permit Authorities ensuring that PAAs are properly considered and issued in the expectation that a permit will ultimately be issued for the activities (though regulation 11(5) makes clear that the issue of a PAA does not guarantee that a permit will be issued).

The purpose of the PAA is to allow the promoter to know they will be able to undertake the proposed activity and provisionally reserve the occupation of the highway. In keeping with this purpose, permit schemes should require an application for a PAA to specify proposed start and end dates for the relevant activities, although the scheme should allow sufficient flexibility to enable the dates to be reasonably adjusted when a permit is ultimately issued.

Permit schemes should require that Provisional Advance Authorisations be obtained in relation to major works not less than 3 months in advance of those activities or as agreed. The information required in support of an application for a PAA should be equivalent to, and certainly should not exceed, that required in support of an application for a permit.

## Conditions

Regulation 10 allows for the provision of attaching conditions to permits. The scheme must provide for that and must specify the types of conditions that will be applied. To allow effective monitoring and management of activities to take place, permit schemes should provide that the permit specifies in detail the activity it allows and the conditions attached. Much of the information will be drawn through from the application into the permit and its conditions. As a minimum, any constraints in the original application should be reflected in conditions in the permit. For example, if the activity is to be in a location which is traffic sensitive at some times and the original application stated that the activity was to be outside the traffic sensitive times, then that should be made a condition of the permit.

The Permit Authority may also wish to vary the conditions or impose such other conditions on the activities authorised by the permit as it sees fit, having regard to the potential of that activity to cause disruption on its network. If possible, the authority should first talk to the promoter. Depending upon the outcome of discussions, the Permit Authority may then choose to issue the permit which includes conditions that differ from the proposals in the application.

Regulation 13 provides for permit schemes to impose conditions on activities which are not the subject of a permit. In practice this means the initial stage of an immediate activity before a permit is issued. This is dealt with in the section above on “Permit for Immediate Activities”.

Permit Authorities should ensure that in their schemes they are able to link an immediate activity and the conditions attached to it prior to a permit being issued with the application for a permit for that immediate activity when it is made. Without such a link there could be two separate sets of information about one activity, possibly with different conditions, which could compromise effective management of the network.

## Variations

Regulation 15 provides for permits and the conditions attached to permits to be varied. This is important so that the Permit Authority can actively manage other activities on the network in the light of changing circumstances. Variations can take place at any time after the permit has been issued and before or during the activity itself, but must be done before the permit end date is passed.

A provisional advance authorisation cannot be varied. Permit schemes should be designed so that in circumstances where a PAA has been given but a full permit has not yet been issued, and proposals change, the Permit Authority should be informed of the proposed changes and a revised application for PAA or permit made.

Under Regulation 15(2), the Permit Authority must ensure that the permit scheme sets out clearly how applications for permit variations or variations to permit conditions must be made. Schemes should provide that:

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

in any other case the promoter shall first telephone the Permit Authority to ascertain whether the Authority is prepared to grant a variation and only apply, again electronically, if the Authority is so prepared.

Activities can be particularly subject to change where a promoter has to make several excavations or registerable openings of the street in order to locate a fault. An example would be where gas had migrated along a duct to emerge from the ground some distance from the actual leak. The nature of searches in this sort of situation is that a series of excavations or openings are made from where the symptoms are apparent to trace back to the point where the fault is occurring. In normal circumstances each new excavation would require a permit variation. The arrangements below aim to avoid a potential excess of permit variations in a short space of time as each successive hole is dug. While wanting to avoid too many permit variations, it is nonetheless important that the permit authority knows what is going on so that they can coordinate and manage these and other works in the area.



Permit Authorities should provide that only in these fault-finding circumstances requiring a series of excavations or openings, and where the activities are immediate activities, their schemes should apply the following arrangements. As immediate works, the promoter will submit the first permit application within 2 hours of starting work . That first application will contain the location of the initial excavation or opening:

For any further excavations on the same street within 50m of the original hole, the promoter will telephone the authority to inform them of the new location but no permit variation will be needed and no permit charge can apply. The promoter will have to apply for a permit variation for the first excavation in each new 50m band away from the original hole in the same street, i.e. 50-100m, 100-150m etc. Standard variation charges can be applied, although the permit authority may opt to waive such charges in its scheme generally or for particular cases. Separate variations would be required for bands going in different directions along the street in question.

For any further excavations within each band the promoter will have to telephone the authority to inform them of the new location but no permit variation will be needed and no permit charge can apply. If at any time the search carries into a different street, or more strictly a new USRN (including if the street changes to a different authority), then a separate permit application must be made for the new street. If the promoter cannot contact the authority by telephone they should record that and send the message electronically.

It follows from other aspects of permit schemes that conditions for these activities can be varied, e.g. to take account of the fact that the new location, even if within the same 50m band, is in a potentially more disruptive location.

One of the features of permit schemes is that they effectively allow road space to be booked by promoters for their activities. Once the permit is issued the promoter should have reasonable confidence that road space will be available for them. Nevertheless, even when a permit has been issued in good faith by the Permit Authority, circumstances beyond the Authority's control may cause the Authority to review the permit and may lead them to conclude that the permit or its conditions need to be changed. Such changes should be the exception and should only happen when the new circumstances could not have been reasonably predicted or where the impact is significant. For example, roads being closed by floods, burst mains, dangerous building, or unexploded bomb and significant traffic disruption has ensued etc which would lead to traffic being diverted onto the road where an activity was underway or about to start but the permit had been issued. If the consequent disruption cannot be mitigated in a better way it may be necessary to vary the permit for the activity e.g. by changing the time or manner of working. Regulation 15(3) provides that the Permit Scheme must include a statement of the Permit Authority's policy as

to the circumstances in which it will review, vary or revoke permits on its own initiative.

The policy statement should usefully include an explanation of the procedures which will apply when the Permit Authority decides to initiate a change. Advance consultation with the permit holder affected will be appropriate in most cases, and it is desirable that wherever possible changes should be agreed with them. Under Regulation 31(2) no fee may be charged for variations initiated by the Permit Authority.

## Revocation

As with variations to permits, the revocation of a permit can be initiated by either the promoter or the Permit Authority. The permit scheme should set out the process by which a promoter who no longer requires a permit for an activity can request the Authority to revoke or cancel a permit that has already been issued or cancel or withdraw an application that has been submitted but for which a permit has not yet been granted.

As with variations, for revocations initiated by the Permit Authority, the Authority must set out its policy as to the circumstances in which it will revoke permits on its own initiative.

## Permit Applications

The Permit Authority should make it clear to all promoters working in their area, or who may potentially work in their area, the name and contact details of the relevant person or persons who will be dealing with permit applications. It is suggested that this should be done through a dedicated section on their website. It is not suggested that this is set out in the permit scheme, as the permit scheme cannot be readily amended.

In line with Regulations 9(9), Permit Authorities must ensure that their schemes require promoters applying for permits or provisional advance authorisations to copy their applications to any authority or undertaker that has requested to see notices or permit applications on certain streets. Regulation 37(7) imposes the equivalent requirement (through an amendment to section 93 of NRSWA) ` for copying such an application to the relevant transport authority for activities in the vicinity of a level crossing.

## Timing of Applications and Permit Authority Response

For effective planning and co-ordination information needs to be provided to the Permit Authority in good time. Permit schemes should provide for the minimum time periods before the proposed start date of an activity by which time the relevant permit application needs to be made. As it is considered that it would be beneficial for standard periods to apply in all permit schemes, it is strongly recommended that the timings set out in the Table below should be adopted. In measuring from the proposed start date, the time period is measured from the time of receipt of the application by the Permit Authority. The EToN system will provide an auditable record of when an application was received.

Permit Authorities may also include in their permit schemes a condition that, where Immediate Activities are undertaken on certain designated streets, the undertaker is required to contact the Authority by telephone immediately, notwithstanding the duty to submit a permit application within two hours. It is not intended that all category 0-2 and traffic sensitive streets should be so designated but only those most susceptible to unplanned disruption. It would also be reasonable for this condition to be limited to times when the authority has arrangements in place to respond to such calls. Consideration would need to be given, in particular, to arrangements out of normal working hours. If Permit Authorities include this requirement in their scheme, they will need to indicate the designated streets on the ASD with a marker, together with the contact telephone number.

While it is crucial that applications for permits and variations are made in a timely manner, it is equally essential that Permit Authorities are proactive in running a permit scheme. Regulation 16 requires time limits to be set out in a permit scheme committing the Permit Authority to respond to applications within set periods. Again, for reasons of consistency, schemes should use the time periods set out in the Table below. As with timings for applications, the Table refers to times of receipt. A “response” for these purposes means a decision to grant or refuse a permit, but where there are reasons why the permit cannot or should not be granted in the terms applied for (e.g. because of insufficient information or because of a clash with other activities), the response indicating that a permit will not be granted in those terms should explain the reasons to the applicant, which will enable them to make a revised, compliant application.

## Table of application and response times

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

“Days” in the above table refer to working days, as defined in NRSWA and the permit regulations.

## Permit Application Content

It is desirable that there should be a high degree of consistency between permit schemes, and in view of this Permit Authorities should design their permit schemes so as to incorporate the following in relation to permit applications:

### USRN

Regulation 9(4) provides that a permit may relate only to a single street. In order to enable the permit register to be as detailed as possible, permit schemes should provide that a “street” should relate to a single USRN. Thus where a single street on the ground has more than one USRN, separate permits would have to be issued in respect of each USRN to which an activity relates.

## Description of activity

Permit schemes should require a sufficiently detailed description of the activities to be provided to allow the street authority to assess the likely impact of the activity. It is anticipated that the level of detail should be no less than that already required under the NRSWA notice system.

## Location

Permit schemes should require promoters to include an accurate location in their application based on National Grid References (NGRs), one in the centre of the excavation for small excavations and one at each end of trenches, along with the dimensions of the space taken up by the activity in the street. That space needs to cover all the area used by the activity, including for storage of materials, working space, safety zone, provision for pedestrians and traffic management.

## Timing and Duration

Permit schemes should require each application for a permit to include proposed start and end dates, and should require applicants to indicate whether they wish the permit to cover work at weekends and on Bank Holidays (where applicable). It is also suggested that details of the times of day the activity is to be carried out should also be required, including any proposal to work at night. This would be particularly relevant to Traffic Sensitive Streets.

## Illustration

Permit schemes should allow the Permit Authority to require the applicant to provide an illustration of the works (including plans, digital photographs etc) in appropriate cases. Activities on streets with Special Engineering Difficulty will in any case require a plan and section. It is particularly important that such an illustration is provided where the works are sufficiently significant in terms of potential disruption due to position and size of the activity. This may be more than just major activities as a small excavation in a critical junction may well be much more disruptive. This should include details of what the works are, whether they are likely to affect more than one lane of the street and if possible a numerical measure of estimated disruption. This last measure should only be required if the promoter has ready access to any information needed to derive such an estimate.

## Technique to be used for underground activities

Permit schemes should require applicants to supply details of the planned techniques to be used, such as open cut, trench share, minimum dig technique or no dig. It may often be appropriate for the Permit Authority to ensure that the proposed technique is the one used by making it a condition of the permit.

## Traffic Management and Traffic Regulation Orders

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

## Depth

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

## Reinstatement type

Permit schemes should require applicants to indicate whether the activity is intended to be completed with interim or permanent reinstatement or a mixture of both. If the latter, details would need to be provided as to where interim or permanent reinstatements will be completed within that permit.

## Inspection units

For reasons of consistency, permit schemes should require applications to include 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 in The Street Works (Inspection Fees) (England) (Amendment) Regulations 2004.

## Contact person

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

## Issuing permits

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

Under Regulation 12, all permits must be given a unique reference number, so as to provide a quick means of cross-referencing and assist in the compilation of the register. To the same end, the EToN numbering conventions should be followed when determining reference numbers, under which variations to permits are denoted by the use of the same unique reference with a suffix to denote the variation. Permit Authorities should also mark permits in such a way as indicates any cross references to linked permits which have been issued.

Permit Authorities should also include provision in their permit schemes imposing standard conditions on permits which will require the permit reference number to be prominently displayed on the site information board for each set of works. This will assist inspections, particularly in relation to the checking of conditions with which promoters are required to comply.

## Permit Conditions

Permit schemes may make provision for the Permit Authority to attach any or all of the types of conditions in Regulation 10(2) to permits. If a Permit Authority is considering including any types of conditions not listed in Regulation 10(2) in their scheme, such as conditions specific to a locality, they should discuss this with the Department to see if such conditions are likely to be acceptable.

## Fees

Permit Authorities must set out their fees structure clearly to those applying for permits. The fee levels must be justifiable and the means by which they have been worked out should be transparent. The overall income from fees paid by undertakers must not exceed the prescribed costs described in Regulation 29 (the costs of operating the permit scheme in relation to undertakers).

## Maximum fees

Notwithstanding an authority's costs, the regulations set maximum fees that Permit Authorities may charge. These are set out in Regulation 30(4), (5) and (6). They cannot be exceeded.

## Recommended fees

Within the maximum fee caps provided for in the Regulations (Regulation 30(4), (5) and (6)), permit schemes should not provide for fees higher than those set out in the table below in respect of each class of permit.

	Proposed maximum fee levels per permit or provisional advance authorisation	
	Road category 0 - 2 or Traffic Sensitive Streets*	Road category 3 & 4 non Traffic Sensitive Streets*
Application fee for Major Activity Permit (includes Provisional Advance Authorisation)	£105	£75



Issue of Major Activity Permit	£240	£150
Issue of Standard Activity Permit	£130	£75
Issue of Minor Activity Permit	£65	£45
Issue of Immediate Activity Permit	£60	£40

\* Streets are defined as traffic sensitive for this purpose if they are designated as traffic sensitive for any time of the day or year

Similarly, in relation to permit variation fees, in addition to the maximum fee established in the Regulations, the following should not exceed £35 for category 3 and 4 non traffic sensitive streets; and £45 for category 0, 1 and 2 and traffic sensitive streets

Permit schemes should make appropriate provision so that where a permit variation would move an activity into higher category, the promoter will be required to pay the difference between the permit fee for the two categories as well as the permit variation fee.

These fee levels are intended as maximum fee levels, and it may be appropriate for lower fees to be provided for in permit schemes.

#### Circumstances when no fees or reduced fees are payable

The Regulations 31(1), 31(2) and 31(3) prescribe circumstances when no fee can be charged to a promoter. In addition, there may be circumstances where through no action, failing or fault on the part of the promoter, the Permit Authority revokes the promoters permit. This might arise as a result of third party activity. If as a result the promoter had to apply for a new permit, it would be reasonable to pay no fee for the new permit. Permit Authorities should incorporate such a provision in their schemes.

Regulations 31(4) deals with situation where discounts must be applied, when one or more promoters are collaborating to reduce the impact of their works. Provided the objective of reducing impact is met, such circumstances could include:

Where an activity is part of a project that involves working on more than one adjacent streets. Project in this context means a set of works that is of the same order as would take place in a single street but which happens to cover more than one street, e.g. if repairs on a pipe go round a corner from one street into another. It is not intended to cover whole area wide projects in a single permit

Where an activity involves more than one promoter collaborating in a single coordinated set of works. Permit Authorities should provide that where highway authority promoters are collaborating with undertakers, those undertakers will be eligible for the discount in Regulation 31(5).

Regulation 31(5) provides for a uniform discount for all promoters involved in the qualifying circumstances, whoever is the lead promoter. Permit Authorities may design their schemes to allow for greater discounts, for example if they wish to encourage particular behaviours.

If a Permit Authority wished to set out circumstances in which it would always waive or reduce fees it can set this out in the permit scheme, as long as the circumstances can be clearly codified. It should be understood that the Authority would be bound by this commitment. Even if such a provision was in their scheme, a Permit Authority may also wish to include provision enabling it to waive or reduce fees in other circumstances as well.

## Use of fee income

Regulation 32 stipulates that fee income must be applied towards the costs of operating the permit scheme which are prescribed costs – i.e. the costs of the scheme which are attributable to the activities of statutory undertakers. In the event that there is a surplus in a given year, the money should be applied towards the costs of the scheme in the next year and the fee levels adjusted accordingly. A sustained surplus would indicate that the income was regularly exceeding the prescribed costs and that the fee levels should be adjusted, which the Secretary of State may do using his powers under s36 of TMA.

## Sanctions

The Regulations provide Permit Authorities with a number of sanctions which they may use to achieve compliance with permit schemes. Permit Authorities should prepare a policy statement to indicate how it proposes to employ the sanctions.

Regulation 18(1) enables Permit Authorities to issue notices in respect of non-compliance, and to propose remedial action which must be undertaken within the timeframe set in the notice.

Regulation 18(3) builds on these notices, and provides that where an undertaker has not taken the remedial action within the timeframe, the Permit

Authority may take such steps as it considers appropriate having regard to the original non-compliance, at the cost of the undertaker.

Regulation 19 provides that it is a criminal offence for an undertaker or someone acting on its behalf to undertake works without a permit. The offence carries a maximum fine of level 5 on the standard scale (currently £5000). Regulation 20 provides that it is a criminal offence for an undertaker or someone acting on its behalf to undertake works in breach of a condition. This offence carries a maximum fine of level 4 on the standard scale (currently £2500).

Regulations 21 to 28 (and Schedules 1 and 2) authorize Permit Authorities to issue Fixed Penalty Notices in respect of the criminal offences. Fixed Penalty Notices offer the offender an opportunity to discharge liability for an offence by paying a penalty amount. The penalty amount is £500 for working without a permit, but a discounted amount of £300 is available if payment is made within 29 days. For working in breach of a condition the penalty is £120 and the discounted amount £80, the same as for Fixed Penalty Notices under the notices system.

In circumstances where a Fixed Penalty Notice has been issued in relation to an offence, but the Permit Authority forms the view that it would be more appropriate to prosecute the offender, the Authority must withdraw the Notice under Regulation 27 before bringing the proceedings. Once the Fixed Penalty Notice has been paid, however, no prosecution can be brought.

## Modifications of NRSWA provisions

Part 8 of the Regulations provides for the disapplication of certain sections of NRSWA which govern the notices system, on the basis that applications for permits serve the same purpose of providing information to the Permit Authority. Part 8 also provides for the modification of other sections of NRSWA, principally to replace references to the disappplied sections with references appropriate to permit schemes.

Some changes to the provisions in NRSWA and its regulations affect both undertakers' and highway authorities' activities but others do not. In particular the changes to section 58 (restrictions on works following substantial road works) and section 74 (charge for occupation of the highway where works unreasonably prolonged) apply only to undertakers' activities. Permit schemes should make arrangements so that similar procedures are followed for highway activities in relation to timing and duration, in order to facilitate the operation of the permit scheme and, as far as possible, parity of treatment for all promoters.

For consistency between schemes, all of the Part 8 disapplications and modifications should apply to all streets to which permit schemes apply.

## Glossary

Terms used definitions.

ASD:	Associated Street Data
EToN	Electronic Transfer of Notices
GIS	Geographic Information System
Main Roads	All streets in road categories type 0, type 1 and type 2, and any other streets designated as traffic sensitive at any time
Minor Roads	All streets in road categories type 3 and type 4 that are non designated as traffic sensitive at any time
NGR	National Grid Reference
Notice System	System whereby statutory undertakers give advance notice of street works to street authorities - NRSWA s54, s55 and s57.
NRSWA	New Roads and Street Works Act 1991
Registerable Activities:	Activity in the context of permits refers to: street works as defined in s48 (3) of the New Roads and Street Works Act 1991 (NRSWA); works for road purposes as defined by s86 (2) of NRSWA; other works that occupy the highway carried out by the authority in its capacity as a highway authority or traffic authority. It corresponds to the “registerable works” under the Notice System which excludes certain de minimus street works and equivalent highway and traffic works.
Road Categories: Type 0 Type 1 Type 2 Type 3 Type 4	roads carrying over 30 to 125 msa* 10 to 30 msa 2.5 to 10 msa 0.5 to 2.5 msa up to 0.5 msa (*millions of standard axles)
TMA	Traffic Management Act 2004
Traffic Sensitive streets	Under section 64 of NRSWA a street authority may designate certain streets (or parts of streets) as "traffic-sensitive". The purpose of this designation is to flag that works proposed in these situations are likely to be particularly disruptive to other road users, but this does not necessarily prevent occupation during traffic-sensitive times.
USRN	Unique Street Reference Number
Activity Categories:	

Major Activities:	Please refer to paragraph 36.
Standard Activities:	Please refer to paragraph 36.
Minor Activities:	Please refer to paragraph 36.
Immediate Activities:	Fall into two categories: Emergency and Urgent.
Emergency works	See above.
Urgent Works	See above.

# Appendix F - Traffic Management Act 2004 Code of Practice for Permits - procedures and guidance - draft amended extract

This document is in draft form (it is not a legal document) and is subject to change and amendment following the consultation exercise and subsequent consideration of the responses.

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## FOREWORD

This Code of Practice provides guidance intended to help a common approach to the operation of permit schemes. It follows the regulations and statutory guidance but goes beyond that in places, building on discussions in the Permits Working Group (who comprise of representatives from The Department for Transport, National Joint Utilities Group and local highway authorities ) often paralleling the notices regime arrangements.

However the details of permit schemes will be in their individual Order. This Code may need revising in the light of experience once schemes have been operating.

## INTRODUCTION

Permit schemes provide a new way to manage activities in the public highway. They were introduced by Part 3 of the Traffic Management Act 2004 (TMA) to improve authorities' abilities to minimise disruption from street and highway works.

Permit schemes provide an alternative to the 'notification system' of the New Roads and Street Works Act 1991 (NRSWA). Instead of informing a street authority about its intention to carry out works in the area, a utility company would need to book time on the highway through a permit as would a highway authority for its own works.

At least initially, it is likely that both systems will operate in different areas. To reduce confusion and to ensure consistency and better co-ordination, categorisations from key areas of the notice system have been carried over to the permits system. These include road and works categories for example:

### Activities

'Activities', rather than 'works', is the generic term used in connection with permit schemes. This reflects the fact that schemes may eventually encompass more than street and highway works. Whilst the first set of permit regulations covers only those two types of activity, it is intended to extend the scope of permit schemes in subsequent regulations.

For the present Code of Practice activities are defined in regulations as including:

street works as in Part 3 of NRSWA, except for works by licensees under section 50 of NRSWA;  
works for road purposes as defined by section 86 of NRSWA .

### 1.2 Permit Schemes

A permit scheme can be operated by a 'permit authority'. Usually, this would be the highway authority for the streets concerned but it could cover several

authorities operating together. Authorities are not obliged to run a permit scheme.

### Scheme Orders

Permit schemes are established by individual local highway authority Order. The Order contains all the details of the individual scheme including those elements which are required by regulations.

### Differences from NRSWA

Permit schemes differ from existing powers for managing activities on the street in a number of key respects:

rather than informing the authority of the promoters' intentions, they may be envisaged as schemes to book occupation of the street for specified periods and for a specified purpose

highway authorities' own works are included

conditions which impose constraints on the dates and times of activities and the way that work is carried out can be attached to permits  
the authority's control over variations to the permit conditions, particularly time extensions, gives a greater incentive to complete activities on time.

Permit schemes will replace parts of NRSWA, particularly the notices related to section 54 (advanced notice of certain works), section 55 (notice of start of works) and section 57 (notice of emergency works). Many elements of NRSWA will continue alongside permit schemes, in some cases amended to operate effectively with permits.

Where necessary, activity promoters must also submit any notices required by those sections of NRSWA not disapplied in the permit regulations. Details of these can be found in the Co-ordination Code of Practice<sup>8</sup> and Notices Regulations 2007<sup>9</sup>.

### 1.2.3 Highway authority activities

Under a permit scheme the highway authority's activities will be treated in exactly the same way with regard to co-ordination and the setting of conditions. Authorities will need to ensure sufficient separation between those operating the permit scheme and those responsible for highway activities so that parity of treatment is evident. In many authorities the Traffic Manager (designated as required by section 17 of the TMA) may be separated from the highway activities.

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<sup>8</sup> *Code of Practice for the Co-ordination of Street Works and Works for Road purposes and related matters 3<sup>rd</sup> edition 2007*

<sup>9</sup> *The Street Works (registers, Notices, Directions and Designations) (England) regulations 2007 SI [X], No [x]*



A set of Key Performance Indicators (KPIs) (see Chapter 20) will have been developed by the authority so that permit authorities can show that they are operating the scheme in a fair and equitable way. Authorities will report on these or other measures annually and these will feed into the assessment of an authority's performance of its Network Management Duty.

### 1.3 Statutory Background

Prior to the TMA, activities in the highway have been subject to the provisions in various statutes, in particular NRSWA for utility street works, and the Highways Act 1980 and Road Traffic Regulation Act 1984 for works by highway and traffic authorities.

Section 59 of NRSWA places a duty on the street authority to co-ordinate works of all kinds on the highway. Equally important is the parallel duty on undertakers to co-operate in this process (section 60). The TMA and the associated regulations widen the section 59 co-ordination duty to include other prescribed activities that involve temporary occupation or use of road space. That will incorporate any activities included in a permit scheme.

#### 1.3.1 Traffic Authorities - network management duty (NMD)

Section 16 of the TMA introduced a network management duty (NMD) on traffic authorities. The statutory guidance on the NMD refers to the management of street works and highways works, and other activities on the highway, as one aspect of the duty.

The NMD requires local traffic authorities, usually the local highway authorities, to manage their road network to achieve - as far as may be reasonably practicable having regard to their other obligations, policies and objectives - the following objectives:

- (a) securing the expeditious movement of traffic on the authority's road network; and,
- (b) facilitating the expeditious movement of traffic on road networks for which another authority is the traffic authority.

This may involve exercising any power to regulate or co-ordinate the use of any road, or part of road, in the road network (whether or not the power was conferred in their capacity as a traffic authority).

Under the NMD, local traffic authorities must establish processes, as far as reasonably practical, to ensure that they:

identify causes, or potential causes, of road congestion or other disruption to the movement of traffic on their road network; and,

consider any possible action that could be taken in response to or in anticipation of such causes.

These processes should cover a wide range of activities, such as identifying and managing different roads or classes of roads, monitoring the road network and the co-ordination and direction of works - which includes the management of an authority's own works for road purposes.

However, there is no requirement to identify or consider anything that appears to have only an insignificant effect on the movement of traffic.

### 1.3.2 Intervention Notices and Orders

Under the TMA, the Secretary of State has the power to intervene through an 'Intervention Notice' or 'Intervention Order' if he considers that a local traffic authority may be, or is, failing to perform any of its network management duties. A guidance document, *The Traffic Management (Guidance on Intervention Criteria) (England) Order 2007*<sup>10</sup> sets out what the Secretary of State would take into account in determining whether or not a local traffic authority is performing its network management duties. This includes:

- (a) co-ordinating and planning works and known events; and,
- (b) ensuring parity with others, by applying the same standard or approaches to an authority's own works as to those of other works promoters.

### 1.3.3 Other legislation

As well as the powers contained in NRSWA and the TMA, the authority has a wide range of powers through other legislation such as the Highways Act 1980 and the Road Traffic Regulation Act 1984. It may also have powers granted by local acts, particularly in London.

There are additional duties on local authorities, for instance Part III of the Disability Discrimination Act 1995 (DDA), amended by the DDA 2005, gives disabled people a right of access to goods, facilities, services and premises. By providing integrated and accessible transport and a barrier-free pedestrian environment, local traffic and highway authorities will deliver this right and fulfil their obligations.

### 1.3.4 Undertakers – statutory obligations

The local authority duties above must be balanced against the statutory obligations of statutory undertakers. Statutory undertakers, or those in possession of a street works licence (under section 50 of NRSWA), have a legal right to carry out street works. Statutory undertakers are generally those companies that supply water, gas, electricity and telecommunications or control sewerage, but there are a few less obvious ones, for example London Underground, which may need access to equipment for communications or power.

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<sup>10</sup> *The Traffic Management (Guidance on Intervention Criteria) (England) Order 2007* SI 2007 339 ISBN 978-0-11-075792-6

The utility companies have statutory obligations to provide a supply or service, and these are closely monitored by the utility regulators, OFWAT (water industry), OFGEM (gas and electricity industries) and OFCOM (communications industry), to ensure that the required level of service is maintained. This will include restoring supply, as well as ensuring new customers are connected within certain time frames. Under legislation, customers of the electricity, gas or water companies, subject to certain exemptions, may be entitled to compensation if a company fails to meet these guaranteed standards of performance<sup>11</sup>.

The operators of a gas network also have obligations under regulations enforced by the Health and Safety Executive<sup>12</sup>. These require operators of gas networks to carry out certain works within a specific time or to replace certain types of apparatus within a specified period. Currently, the gas industry has a programme to replace all metal apparatus within 30 metres of properties, over 30 years, from 2001, with highest priority given to that apparatus at greatest risk, based on an agreed safety case to assess priorities. The priorities may change to reflect an escalation of risk based on either new information about specific types of pipes or apparatus, or as result of incidents involving a specific pipe.

#### 1.4 Code of Practice

This Code is intended to help permit authorities to carry out their duty to co-ordinate all activities in the highway and promoters to co-operate with them in that process.

It is important that authorities and promoters work closely together. None of the provisions of this Code and its accompanying legislation can be achieved without the commitment of all concerned:

to ensure that the information provided and given with respect to all the requirements in this Code is up to date, timely and correct, including all permit applications, permit variations and permits issued; and,

to act reasonably in the decisions and actions taken (the extent to which parties have done so would be a factor in resolving any subsequent dispute).

Promoters and authorities are both subject to legal requirements in the primary legislation and regulations. Permit authorities must also take the Statutory Guidance into account in preparing permit schemes. The remainder of the Code contains further guidance for all parties on their involvement in the preparation and operation of permit schemes.

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<sup>11</sup> The Electricity (Standards of Performance) Regulations 2001 (as amended), the Gas (Standards of Performance) Regulations 2005 (as amended) and the Water Supply and Sewerage Services (Customer Service Standards) Regulations 1989 (as amended).

<sup>12</sup> Gas Safety (Installation and Use) Regulations 1998 SI 2451 and Gas Safety (Management) Regulations 1996 SI 551

## 7. APPLICATION TO BECOME A PERMIT SCHEME OPERATOR

### 7.1 Introduction

Permit schemes give authorities greater control over activities on the street.

### 7.2 Applications to Operate a Permit Scheme

A permit scheme can be operated by:

a local highway authority, or two or more such authorities acting together

a "Secretary of State" - in effect this means the Highways Agency (on behalf of the Secretary of State for Transport) in England and,

the Secretary of State for Culture, Media and Sport - on roads in the Royal Parks.

The Secretary of State also retains reserve powers to compel a local authority to apply to run a permit scheme.

#### 7.2.1 Where a scheme can operate

An authority can apply to operate a permit scheme for all or some of its roads.

Options include:

requiring permits for all roads, including minor roads, with each application scrutinised individually;

requiring permits for all roads and dealing with permit applications on minor roads on an exception basis; or,

requiring permits on main roads (e.g. category 0 – 2 and traffic-sensitive roads) but using the revised NRSWA noticing regime on all other roads.

Permit schemes can not apply to roads that are not maintained at the public expense or private streets. The existing notification arrangements under NRSWA, as amended by the TMA, will continue to apply where a permit scheme is not in operation. To assist works promoters, authorities are required to indicate in the ASD which streets are subject to a permit scheme and which are subject to the NRSWA notification scheme.

#### 7.2.2 Consultation

There is a statutory requirement for Highway Authorities to carry out a full consultation of the following stakeholders before introducing a permit scheme:

Every works promoter which carries out activities from time to time in the area (at present this does not include skip, hoarding and scaffolding promoters).

Every local authority (other than the street authority) with a street in the area of the proposed scheme.

Transport for London, where any street, to which the proposed scheme applies, is in Greater London.

Any Passenger Transport Executive or other transport authority in whose area the street is located.

The Chief Officer of Police, the Chief Executive of the Fire and Rescue Authority and the Chief Executive of the National Health Service Ambulance Trust and any other emergency services, e.g. Coastguards, responsible for operations in the area.

The Secretary of State

The authority must also consult other appropriate persons, including:  
Any authority that has registered an interest in receiving copies of permit applications for any of the streets to which the proposed scheme applies.

Any person who has made a written request to the street authority to be given notice of the proposed scheme.

### 7.2.3 Content of applications

Applications must contain the following information:

- a) A description of the proposed scheme including:
    - the area to which it will apply (and whether it will also cover areas in other authorities);
    - the streets over which it will operate. See 7.2.1;
    - what provisions the authority proposes to include - where the regulations allow flexibility in the operation of a scheme.
    - name of highway authority(ies);
    - the objectives of the scheme, including an explanation of how performance against these will be measured, and an appraisal of the expected costs and benefits;
    - the date the authority will be ready to start operating the scheme (this must be a minimum of four months after the application date, unless previously agreed otherwise);
    - transitional arrangements;
    - confirmation that a consultation (which included, at a minimum, the statutory consultees) has taken place; the outcome and any changes made as a result;
    - justification and explanation of proposed fee levels; and
    - proposals for how the scheme will be operated, including:
      - how the authority will administer its own works to ensure parity of treatment with activities carried out by statutory undertakers. This includes the measurement and evaluation of the scheme – using KPIs (see Chapter 20);
      - how the permit scheme will work alongside other measures to enable the authority to meet its network management duty requirements.
- Authorities need to ensure that proposed schemes will comply with Part 3 of the Traffic Management Act 2004 and the Permit Regulations otherwise the application will be rejected.

#### 7.2.4 Scheme Orders

The Secretary of State has reserve powers to revoke a scheme if it becomes apparent that an authority is not operating its scheme effectively or equitably, for example. This could be indicated by the KPI measures chosen by the authority's or other assessments, if they reveal that the scheme does not and can not perform as expected.

If the Secretary of State revokes a scheme or the authority ceases the scheme all works promoters should be notified at least four weeks in advance of the change.

#### 7.2.5 Notifying promoters

Once an authority has decided on an implementation date it will need to give all works promoters in its area at least four weeks notice of its intention to operate a permit scheme from a given date. The authority should also provide promoters with details of the approved scheme as it may differ from the one applied for. Details could be sent with the notification of the start date or placed on the authority's website along with the transitional details.

### 7.3 Joint Permit Schemes

A local highway authority can operate a scheme solely on roads in its area. Alternatively, several authorities may operate a permit scheme over their combined areas. Such a scheme could be administered by one authority on behalf of all the others or by each authority retaining responsibility for the scheme within its boundaries.

Decisions to run a joint scheme will need to demonstrate they have fully discussed and agreed how the scheme will be controlled and the fees apportioned. They will also have to demonstrate how each authority will meet its network management duty requirements whilst operating a joint permit scheme.

Proposals for a joint scheme should include arrangements whereby one authority could leave without ending the entire scheme for the other participants. The arrangements should also specify the notice period for a withdrawal.

### 7.4 Common Permit Schemes

A 'common permit scheme' is a scheme with a single set of rules, which a group of neighbouring authorities apply independently to their own roads – subject to the usual cross boundary co-operation. A common scheme, in contrast to a joint scheme, requires an application and an Order for each authority. Authorities may want to co-ordinate the consultation on a common scheme because many of the stakeholders will be the same. Each authority must ensure that all of its statutory consultees are included and that it considers the

results of the consultation in relation to its own proposed operation of the scheme.

Each authority must also demonstrate that it is in a position to operate a scheme for its roads in accordance with the requirements of the Traffic Management Act, the Permit Regulations and this Code of Practice.

#### 7.5 Changes to Permit Schemes

The authority should consider implications of changing their scheme. In general, any changes to a permit scheme should be subject to the same consultation as the original scheme. However, the permit authority may carry out a reduced and /or shortened consultation if the changes are minor.

From time to time the Secretary of State may revise the permit regulations. This could necessitate changes in existing schemes.

Regulations will make provisions for such changes if they are required and the Code of Practice will be amended as necessary.

## 20. KPIS AND PERMIT SCHEMES

### 20.1 Background

One aim of permit schemes is to ensure that authorities apply a consistent approach to all activities and activity promoters.

In most cases the permit authority will be the highway authority but the highway authority will also be a promoter of its own maintenance and other highway and traffic activities. Authorities will need to separate these functions within their organisations. Notwithstanding that separation, it would be inappropriate for one part of an authority to charge fees or issue penalties against another part of the same organisation.

### 20.2 Parity of Treatment

Authorities must demonstrate parity of treatment for all activity promoters, particularly between statutory undertakers and the highway authorities' own promoters. The issue of equal treatment is emphasised in the Guidance on the Network Management Duty introduced under the TMA.

Equality will be measured through Key Performance Indicators (KPIs). A permit authority must produce an annual set of KPIs that identify the treatment of individual promoters.

The KPIs described in this chapter can be used for the specific purpose of demonstrating parity of treatment within a permit scheme, although they may also indicate other aspects of performance of individual promoters, the authority or the permit scheme itself.

It is likely that the KPIs will be developed as experience of permit schemes increases and datasets are built up – work is currently underway to develop permit scheme KPIs linked to work by HAUC on the 'score card', so other KPIs may be developed in due course.

### 20.3 KPIs for Permit Schemes

Every authority running a permit scheme must set out how it intends to demonstrate parity of treatment for promoters in its application. The table below contains seven KPIs that could be used for this purpose. Authorities develop their own KPIs.

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

The data will provide useful information for Government and other regulatory bodies and the Department for Transport may wish to inspect information generated by the chosen KPIs so information should be available for this purpose.



Table 9. KPIs for permit schemes	
1.	The number of permit and permit variation applications received, the number granted and the number refused
	<p>This will be measured by the promoter and shown as:  the total number of permit and permit variation applications received, excluding any applications that are subsequently withdrawn  the number granted as a percentage of the total applications made  the number refused as a percentage of the total applications made.</p> <p>This will be a core indicator of the operation of the permit system.</p>
2.	The number of conditions applied by condition type
	<p>This will be measured by promoter and shown as:  the number of permits issued  the number of conditions applied, broken down into condition types. The number of each type being shown as a percentage of the total permits issued.</p> <p>This KPI is dependent upon the use of standard conditions. Local or specific conditions should be grouped into a single category that may be analysed more fully if required.</p> <p>The number and types of condition applied are likely to be determined by the specific location, scale and category of the works. There will be a need to separate the data to get down to reasonably equivalent situations. For example, if for minor works on category 2 streets, one promoter had an average of four conditions and another had an average of seven conditions then that would suggest an imbalance. Similarly, if one promoter had conditions for restricted hours of working on traffic-sensitive streets in 90% of cases and another had such conditions in only 60% of cases, then that would raise a question.</p>
3.	The number of approved extensions
	<p>This will be measured by promoter and shown as:  the total number of permits issued  the number of requests for extensions shown as a percentage of permits issued  the number of agreed extensions as a percentage of extensions applied for.</p>
4.	The number of occurrences of reducing the application period
	<p>This will be measured by promoter and shown as:  the total number of permit and permit variation applications made  the number of requests to reduce the notification period as a percentage of total applications made  the number of agreements to reduce the notification period as a percentage of requests made.</p>
5.	The number of agreements to work in section 58 and section 58A

restrictions
<p>This will be measured by promoter and shown as:  the number of applications made to carry out works where a section 58 or 58A restriction is in place, other than the allowed exceptions  the number of agreements given for these works to take place as a percentage of the total number of requests.  NB: This KPI is not supported by EToN</p>
<p>6. The proportion of times that a permit authority intervenes on applications that would normally be expected to be deemed</p>
<p>This should be broken down by promoter and indicated as the number of interventions made as a percentage of the number of 'deemed applications' processed, including 'deemed planned applications' made.</p> <p>This KPI would be limited to schemes that do not require a proactive check of every permit application received.</p> <p>Any variation in the dates requested in the initial 'deemed application' and those granted in the permit will indicate where an intervention had taken place. Intervention may not always be made in respect of timing, although it is most likely to be: this KPI will act as a first order measure. It will indicate where active intervention has taken place and not where scrutiny has occurred without any active intervention.</p>
<p>7. Number of inspections carried out to monitor conditions</p>
<p>This will be broken down by promoter and shown as:  the number of sample permit condition checks carried out as a percentage of the number of permits issued  the percentage of sample inspections by promoter should also be shown.</p>

# Appendix G - Traffic Management Act 2004: Permit Schemes Decision Making and Development - draft amended extract

This document is in draft form (it is not a legal document) and is subject to change and amendment following the consultation exercise and subsequent consideration of the responses.

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# Executive summary

This short guidance note on Permit Schemes is aimed at English local highway authorities, and provides tips and suggestions on scheme development and application practicalities. It reflects experience and lessons learned during the development and approval of the first schemes, and should be read in conjunction with, other Department for Transport (DfT) guidance documents giving more detailed advice. The full guidance suite is set out and introduced on the DfT website at:

**<http://www.dft.gov.uk/pgr/roads/network/local/streetworks/>**

This short guidance may from time to time be updated as further practical experience of Permit Schemes emerges, but guidance is not a substitute for learning directly from authorities who are already implementing or developing Permit Schemes. Expertise on scheme design and implementation practicalities will in future be found in local authorities and authorities are encouraged to learn directly from their peers' experience, and to consider lessons for their own networks.

# Initial consideration of permit schemes

- 1.2** In the Department's view, there are three key questions local highway authorities should try to answer for themselves before taking a decision to implement a Permit Scheme.
- What are the nature and scale of the problems in our area arising from works in the highway?
  - Are there ways to tackle those problems that can be introduced quickly, in advance of a Permit Scheme?
  - Is a Permit Scheme likely to offer value for money?
- 1.3** Local authorities should seek first to understand the nature of the problems in their area. Informal benchmarking of outcomes, management information and processes against those of comparable authorities is the single most valuable tool for identifying specific local problems and potential solutions.
- 1.4** It may be that comparable authorities have developed solutions available for at least some of those problems that can be implemented quickly and simply, without the time commitment and costs involved in developing and implementing a Permit Scheme. Furthermore, the benchmarking process may identify common ground between authorities, and facilitate joint working, including the development of common and joint Permit Schemes. The work of the Joint Authorities Group (JAG, [www.jaguk.org](http://www.jaguk.org)) enables regional and national networks of local authorities that can facilitate successful benchmarking and shared problem-solving. DfT encourages all English local highway authorities and traffic managers to participate fully in those networks.
- 1.5** Following benchmarking, an authority may consider that the scale and nature of local problems are such that a transformational solution is needed. It is at that point that authorities should consider a Permit scheme.
- 1.6** All local authorities developing Permit Schemes need to develop a cost benefit analysis, but it is strongly recommended that a local authority's consideration of value for money should start well before a decision to develop a scheme is made. A greatly simplified early outline appraisal is essential to help decision-makers in local authorities achieve a value-for-money service to the public.

- 1.7** An outline appraisal of this kind does not require lengthy documentation or analysis of the varied different effects of a potential scheme. The dominant benefit of all Permit Schemes is expected to be the reduction in unnecessary delays for road users. The dominant cost will be the cost of the additional staffing and facilities necessary for implementation of a Permit Scheme. Local authorities might, then, start with an outline appraisal that simply compares only one key benefit with one key cost – the expected reduction in delays to road users, set against expected additional staff costs and overheads.
- 1.8** If this comparison is strongly positive, decision-makers can feel confident that further development of the scheme is likely to be worthwhile. If the comparison is equivocal or somewhat negative, authorities might consider a less costly model of Permit Scheme – for example, a scheme that enables them to share more costs with other authorities, or that focuses on the roads and times that offer the greatest potential to reduce road user delays. If the comparison is strongly negative, local authorities may do better to consider other options for improving the management of works.
- 1.9** The key task in such an outline appraisal is therefore to estimate the reduction in road user delay that would be achieved through implementing a Permit scheme on its road network. In making that estimate, local authorities should make use of any available local data about the extent of delays on its network, and about the proportion of delay that is due to works in the highway. They must then make reasonable assumptions about the proportion of that delay that can be prevented through better management of works. In making those assumptions, we suggest local authorities take account of the experience of local authorities implementing the earliest Permit schemes, and the behaviour changes that real Permit Schemes deliver in practice. This evidence is already available.

# Development practicalities

- 6.1** Once an authority has decided on the key features of its preferred Permit Scheme, and considers that its scheme design will maximise the overall value for money of the scheme, it will need to develop them for approval by council order. Similar action will need to be taken where an authority is developing a permit scheme as part of a joint or common scheme.
- 6.2** The Chief Officer of an authority may wish to satisfy themselves that as a minimum the following 4 tests have been met:
- Test 1: A test of the compliance of the proposed scheme with the requirements of relevant legislation and statutory guidance.
  - Test 2: A test to determine if the proposed permit fees are reasonable and adequately justified.
  - Test 3: A test of whether the proposed scheme is likely to deliver value for money. Such an appraisal should be consistent with the principles of the Department's New Approach to Transport Appraisal (NATA). Advice on preparing NATA-consistent appraisals of transport schemes is in the Department's appraisal guidance at [www.webtag.org.uk](http://www.webtag.org.uk).
  - Test 4: Assurance that the scheme is deliverable in practice, and if it is therefore in the public interest to give effect to the scheme.

# The scheme development pack

- 7.41** An authority should consider the reasonable needs of the audience for all their material on Permit Schemes, and to adapt the material according to their needs and interests. For example, material aimed at the general public might emphasise and expand on the objectives of the scheme, and how the authority will ensure the scheme delivers ongoing benefits to road users and value for money to council tax payers. Material aimed at statutory undertakers might, in contrast, focus on the operational practicalities of the scheme, and information on how the permit authority would achieve parity of treatment between works promoters.
- 7.42** Authorities contemplating joint or common schemes may feel it would be useful to develop other information within each scheme document, where they seek to effectively 'bind' all participating authorities to certain aspects of scheme implementation – for example, to a common set of scheme objectives, a common implementation date, or a joint programme of evaluation.
- 7.43** Authorities may wish to develop documentation that defines unambiguously, the types of streets to which various provisions apply. This could, for example, refer to all streets within a boundary defined under other legislation, and for which the prospective permit authority is also the highway authority. If the scheme's provisions are intended to apply differently to different streets within an area, it is most practical to borrow a categorisation that has already been defined elsewhere in highways legislation, rather than attempting to define a new categorisation or resorting to detailed lists of individual roads.



# Checklist for application packs

## 8.1 Authorities may wish to develop information that contains the following;

- a statement of the objectives of the scheme to, as far as possible, include a the quantified improvements in outcomes the scheme is expected to deliver;
- a statement of costs and benefits, in the form of a summary appraisal;
- a statement of the proposed approach to post-implementation evaluation of the proposed scheme, showing how it will measure the achievement by the scheme of the defined objectives, including the 'parity' objective;
- a completed fees matrix, in accordance with the statutory guidance on permit fees;
- the proposed implementation date, which should take account implementation practicalities;
- details of preferred transitional arrangements, reflecting the applicant's consideration of how extant notices and works should be handled in the course of a transition from the authority's current practice to the proposed permit scheme;
- a consultation report, summarising the responses received and any changes made to the proposed scheme following the consultation.

# Implementing a permit scheme

- 10.1** The Department will no longer offers advice relating to introducing a Permit Scheme in a local authority. All activities related to the development, approval and implementation of permit schemes will be a matter for the local authorities concerned, who are the experts in the day to day management of their highway networks.
- 10.2** However, the importance of ensuring an efficient and effective roll-out, that avoids unnecessary administrative problems, cannot be overstated; we therefore invite authorities to consider these issues with their peers who have already implemented schemes. We recommend thorough testing of administrative processes and IT applications, in cooperation with utility companies and other stakeholders, in advance of scheme implementation, and with reference to complex real-life cases.
- 10.3** Authorities are reminded of the legislative requirement to notify all statutory undertakers of the start of a permit scheme no later than four weeks before the planned implementation date. In practice, of course, it is hoped that communications with undertakers will lead to a shared understanding of implementation practicalities well before that deadline.
- 10.4** There is no requirement for authorities implementing common schemes to implement their schemes from the same date, although where this is the case it is likely to minimise potential confusion and reduce complexity for works promoters.

# Annex C

## C.1 Writing an appraisal summary

### Permit Schemes: Cost Benefit Analysis

The following provides information about how to calculate the costs and benefits of permit schemes. There is no requirement to use a specific methodology but, at the very least, good quality survey data should be available. This will be important for evaluation of schemes.

[Within the text are hyperlinks which link to the relevant pieces of DfT guidance.]

All costs incurred due to the implementation of a permit scheme should be included as part of the cost benefit analysis. These include -

- Operating costs (stand-alone and incremental) - consultants, in-house staff, maintenance/running cost etc
- Capital costs - Additional IT equipment, specialist software, accommodation etc

Any costs, including consultancy fees, should not be included in the cost benefit analysis.

Start-up costs should be included and if these include capital costs a risk adjustment and optimism bias should be applied.

There is no requirement for a Quantified Risk Assessment for these schemes and suitable adjustments for risk and optimism bias would be 20% and 15% or a total adjustment of 38%.

## Delays and Congestion

Reductions in street works will reduce the incidence of delays at site and reduce congestion as less diversion takes place. The benefits can be calculated using QUADRO, demand and supply transport models, or micro-simulation models. In the absence of these models good quality survey data based on recognised survey techniques can be used with standard values to give appraisal benefits.

For street works affecting inter-urban road users, the Department's **QUADRO** program can be used. For street works affecting urban road users, delays to traffic may be estimated by using the same congested assignment package as used to predict the overall traffic effects of transport schemes by changing link capacity. Models may also be useful for options affecting public transport users if significant diversion is expected during street works. The **TUBA** program may be used to value delays to road and/or public transport users, using standard economic parameters.

In other cases, simplified approaches to the estimation of delays to public transport users may be sufficient based on survey data. This should include time delays at road works per vehicle and the numbers involved. **DMRB Volume 14 Section 1 Part 2, The Valuation of Costs in QUADRO**, gives the values of time per vehicle together with the underlying assumptions about occupancy and the work, commuting and other non-work split to give these values. Where traffic diverts onto other routes to avoid street works survey data measuring the increase in traffic on these routes can be used to calculate decongestion benefits. These benefits unit costs will vary with traffic levels and the type of road, and thus it will be important to demonstrate that they are appropriate for the timing of the street works and road type being considered. Default unit costs by type of road and level of congestion are given in **WebTAG Unit 3.13.2** which contains links to working spreadsheets.

For street works that affect public transport, the impact on operators' revenues should also be considered. In the absence of a transport model, a simple elasticity based relationship could be used. A standard time elasticity is -0.9 which means that for every 1% decrease in travel time or delay there will be a 0.9% increase in demand. The increase in demand can then be multiplied by the fare to give the change in operator revenues.

## Carbon (Greenhouse Gases)

If QUADRO or TUBA is not used then methods for calculating the changes in carbon emissions and values given in **WebTAG Unit 3.3.5** can be used.

## Local Air Quality

In using any method valuations of changes in local air quality can be calculated using the unit costs given in **WebTAG Unit 3.13.2**.

## Accidents

QUADRO gives outputs that contain accident reduction benefits. Reductions in accidents using survey data should use values given in **WebTAG Unit 3.4.1**.

## Reliability

Reductions in street works will reduce the variability of travel times which road users are willing to pay for. **WebTAG Unit 3.5.7** gives guidance on how to appraise these reliability benefits. In the absence of modelled outputs on travel times and the variability of these travel times a simple mark up on travel time savings can be used depending on the levels of congestion. A suitable range for urban roads is 10% to 20%.

## Road Maintenance Costs

Where street works are reduced a knock on effect could be a reduction in road maintenance. Road maintenance is a mixture of renewal and replacement. Options include low maintenance or renewal costs and frequent replacement or high maintenance or renewal costs and infrequent replacement. If the road maintenance cost savings are to be estimated they should be the savings from either extending the replacement period or reducing the level of maintenance but not both. If the whole life cycle approach to road maintenance is optimised there should be little difference between the two methods. If there is any significant difference then the lower of the two savings should be used in the appraisal. The level of maintenance and replacement periods should be consistent with current practice.

## Pedestrians

For most main roads the impact on pedestrians is likely to be insignificant and for most purposes other than commuting any changes in journey time will have a very low value. If pedestrian benefits are to be counted they should only apply to commuters and based on rigorous survey evidence.

## Appraisal Horizon

The standard appraisal horizons are 60 years or the life of the scheme. In the case of permit schemes the standard appraisal period is normally taken to be 25 years.

## Reductions in Street Works

Until the results of evaluation schemes are known it is a standard assumption that permit schemes will reduce street works by 5%. A higher figure can be assumed if there are good evidence based reasons for doing so. Given the uncertainty behind these reductions any cost benefit analysis should have a sensitivity test which is “what is the level of reduction that would be needed to return a benefit to cost ratio of 2?”

## Units of Account

If QUADRO or a transport model is used with TUBA outputs will be produced in a common unit of account so that costs and benefits can be directly compared. If survey data is used along with values given in the above, some adjustments will need to be made to put all values into a common unit of account, in this case market prices. To do this:

All revenues and capital costs should be multiplied by 1.209 to convert into market prices (time savings are already in market prices);

Any reduction in car kilometres will result in a reduction in excise duty and VAT which should be entered in the public accounts table (see below); and

Any increase in public transport use will result in a reduction in VAT (public transport is zero-rated) which should be entered in the public accounts table.

## Discount Rate

A 3.5% discount rate should be used to convert all annual values to net present values and all annual values should be in real terms i.e. before allowing for inflation.

## Reporting Tables

The results of the cost benefit analysis should be presented in a **Transport Efficiency Table**, an **Analysis of Monetised Costs and Benefits** table and a **Public Accounts** table. These tables, in particular the AMCB table, can be adapted to include benefits such as street works benefits.

# Annex D

[INSERT PERMIT SCHEME NAME] BY ORDER:

This order is made in consideration of section 37(9) of the Traffic Management Act 2004 and regulations 29 and 32 of the Traffic Management Permit Scheme (England) Regulations 2007 (SI 2001 / 3372) (“the regulations”) .

ORDER is made on [insert date]

BY:

[Insert name of Leader of the Local Highway Authority] whose registered office is situated at [Insert address]

I certify on behalf of [insert highway authority name] that the proposed fees payable under the [Insert permit scheme name] have been calculated in accordance with the Department for Transport Permit Fees Guidance (dated July 2008) (“the guidance”). To the best of my knowledge and belief, the permit scheme is compliant with the guidance and with regulations 29 and 32 of the regulations and the income from the proposed fees will not exceed the prescribed costs of operating the permit scheme.

[Insert highway authority name] undertakes to identify and evaluate the sums paid by way of fees and the prescribed costs of operating the scheme. The evaluation shall take place within 6 months of the coming into force date of the permit scheme and thereafter on an annual basis. Following each evaluation, if fee income has exceeded the prescribed costs, [Insert highway authority name] undertakes to make the necessary adjustments to fee levels for the subsequent year in order to comply with the regulations.

Signature.....

Name (block capitals).....

[Insert designation]

On behalf of [Insert highway authority name]

Date.....