



holes. In this latter case, these bar holes will not count as further excavations and reinstatements for the purposes of registrations but will be incorporated with the registerable activity.

- 4.1.5 All bar holes must be reinstated and registered when work on site is complete.

## 4.2 Non Registerable Works

- 4.2.1 The following activities are non registerable:

- a) traffic census surveys have deliberately not been included, as disclosure of this information prior to a census taking place can encourage a change to the normal pattern of traffic flows;
- b) pole testing which does not involve excavation does not require a Permit; and
- c) road marking works that are not part of other works do not require a Permit and are not required to be registered when the above criteria does not apply.

## 4.3 Criminal Offence

- 4.3.1 All registerable activities for which a Permit is required and has not been sought and granted cannot be carried out without committing an offence (see Section 15).

## 4.4 Activity Categories

- 4.4.1 The LoPS applies to the following activity categories: Major, Standard, Minor and Immediate.

### 4.4.2 Major Activities are defined as those activities which:

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

- 4.4.1 **Standard Activities** are defined as those activities, other than immediate or major activities, that have a planned duration of between four and ten days inclusive.



4.4.2 **Minor Activities** are those activities, other than immediate or major activities, where the planned duration is three days or less.

4.4.3 **Immediate Activities** are either:

- a) **emergency works** which are defined in Section 52 of NRSWA, as works required to end, or prevent, circumstances, either existing or imminent, that might cause damage to people or property. This applies to both street works and works for road purposes which fall within the definition of activities. The term also includes activities not falling within that definition but which cannot be severed from those that do - such as activities away from the emergency site that are necessary to shut off or divert a supply. Remedial works to dangerous defective reinstatements are classed as emergency works (but there will be a need to cross reference these to the Permit given for the parent activity); or,
- b) **urgent activities** which are defined in the Regulations as activities:
  - i) (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):
    - to prevent or put an end to an unplanned interruption of any supply or service provided by the promoter;
    - to avoid substantial loss to the promoter in relation to an existing service; or
    - 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; and,
  - ii) includes works that cannot reasonably be severed from such works.

4.4.4 Any works to be carried out in the course of erecting or setting up stand-pipes or water tanks by statutory water undertakers in pursuance of an order made under Section 73 of the Water Resources Act 1991 to meet any deficiency of supplies during a drought are to be included within the definition of “emergency works” *ibid.* Section 132 (8), and see Schedule 8 paragraph 122 to this Act.

## 4.5 **Dispute as to whether Activity is Immediate**

4.5.1 If the Permit Authority disputes whether an activity, or part of an activity, is immediate, as reflected in Section 52 of NRSWA the burden of proving that the activity is immediate lies on the promoter.



- 4.5.2 Where it transpires following such a dispute that works which have been carried out by the Promoter on the basis that they were immediate was incorrect, the Permit Authority will consider whether it is appropriate in the circumstances to apply any of the sanctions as set out in Section 15.

### **4.6 Specified Area and Streets/Roads**

- 4.6.1 A Permit Authority operating the LoPS will operate the scheme across the whole of the area encompassed by that authority's boundaries. TfL will operate the scheme across the GLA area on the roads comprising the TLRN.
- 4.6.2 Within the Permit Authority's area Permits will be required on all types of roads as defined under Regulation 3 of The Street Works (Reinstatement) Regulations 1992 No. 1689, dated 15 July 1992, which came into force on 1 January 1993. These are shown as Road Categories in paragraph 1.3.1 in the Specification for the Reinstatement of Openings in Highways, Second Edition for each of the highway authorities operating this Permit Scheme. The only exception to this general rule is that roads not maintained at the public expense, as indicated in Regulation 8 (2) of The Traffic Management Permit Scheme (England) Regulations 2007 No. 3372, dated 28 November 2008 and coming into force on 1 April 2008 are not included.
- 4.6.3 To assist in this identification each London highway authority operating this Permit Scheme will provide, through any current NSG Concessionaire, an Additional Street Record for each street for which a Permit to carry out activities is required.



## **5 REQUIREMENT FOR A PERMIT**

**5.1** Any activity promoter as defined in the Glossary at Appendix A who wishes to carry out any registerable activity in a road or street, as indicated in Section 4, must obtain a Permit from the relevant Permit Authority operating the LoPS in respect of that road or street. The Permit allows the promoter to carry out the specified activity:

- a) at the specified location;
- b) between the dates shown and for the duration shown; and
- c) subject to any conditions that may be attached.

**5.2** The LoPS does not apply to anyone who is not entitled by virtue of a statutory right to carry out street works or works for road purposes who seeks to carry out such works. Such a person will require a Street Works Licence under S.50 of NRSWA.

**5.3** Immediate activities can commence without the requirement for a Permit, however this is only for an initial stage. It is a requirement that Promoters in such circumstances must apply for a Permit within two hours of the immediate activity commencing or, in the case of the works commencing out of normal working hours, within two hours of the commencement of the next working day.

**5.4** Non-registerable activities can take place without requiring a Permit. However in the event that circumstances change so that the work then becomes a registerable activity, the work must cease, the highway must be fully restored for use by all traffic, and the correct Permit obtained.

**5.5** In addition to a Permit, which may be defined as a full Permit with final details required for all registerable activities, the LoPS requires a Provisional Advance Authorisation to be sought prior to an application for a Permit in respect of major activities. A Provisional Advance Authorisation (PAA) is effectively an early provisional Permit issued before the final details of an activity have been worked out. PAAs are dealt with in Section 6.

### **5.6 Phasing of Works or Activities (previously section 4.6)**

**5.6.1** Where a promoter proposes to carry out works or activities in phases then a separate Permit will be required for each phase. A phase of an activity is a period of continuous occupation of the street (whether or not work is taking place for the whole time) between the start and completion of the works. The dates given in a Permit application and in the issued Permit will denote the dates for that phase. A phase can end only when all the plant, equipment and materials, including any signing, lighting and guarding have been removed from the site.





- 5.6.2 A promoter must clarify when an activity is to be carried out in phases on the application. Each phase will require a Permit and, if a major activity, also a Provisional Advance Authorisation (PAA), and all phases will be cross referenced to previous phases and Permits for those phases.
- 5.6.3 Phased activities must relate to the same works. These could be a single or multiple-but-linked excavation, or a trench dug progressively along the street as part of a continuous operation. Or they could be where an interim reinstatement is made and the permanent reinstatement is done some time later.
- 5.6.4 In addition where temporary reinstatement is required by the Permit Authority in particular to minimise risk to the public and allow safe passage, for example where works are sited on a street or road that will be used by people attending a sporting event, carnival, festival, the works must also be treated as being phased and therefore a separate Permit will be required for each phase.
- 5.6.5 Normally a fee will be required in respect of issuing each Permit for each phase, however, where the requirement for separate Permits arises solely out of the need for temporary reinstatement in order to minimise risk to the public as referred to above, then the Permit Authority will not require a fee to return and complete the phase that was interrupted at the request of the Permit Authority.

### **5.7 New Customer Connections**

- 5.7.1 A new main or cable run, which includes new customer connections, can be classed as one phase if all the work is completed in a single occupation of the street. Otherwise a new Permit must be obtained for the customer connections stage.

### **5.8 Reinstatements**

- 5.8.1 If a permanent reinstatement cannot be completed on the first pass, the activity will be regarded as having two or more separate phases; a separate Permit must be obtained for each phase. (Under the provisions of NRSWA this also means two or more separate works for the purposes of Section 74 of NRSWA). Each phase is from the start date in the relevant Permit to the completion of either interim or permanent reinstatement and the removal of all surplus materials and equipment from site. The same activity reference must be used for all phases in their respective applications and will similarly appear on each issued Permit.

### **5.9 Linked and Cross Boundary Activities**

- 5.9.1 Linked activities carried out at separate locations in a street will be treated as belonging to the same set of works. However, unconnected activities carried out by the same promoter in one street will not be treated as parts, or phases, of a single set of works.



- 5.9.2 Even if an activity involving more than one street forms part of one project in management and contractual terms, separate Permits and Provisional Advance Authorisations must be obtained for each street or USRN or from each permit authority where the works cross the boundary of two permit authorities in the same street.
- 5.9.3 Where a project with activities in more than one street straddles the boundary between one LoPS Permit Authority and another LoPS Permit Authority or an authority operating a Permit Scheme, separate Permit applications, including those for Provisional Advance Authorisation, should be submitted to both Permit Authorities. Furthermore, the project reference should be included on both applications so that each Permit Authority can consider the impact and co-ordinate the activities together.
- 5.9.4 If a cross boundary project involves activities on a street of an authority operating a notice system under NRSWA, then the Permit application to the LoPS Permit Authority must identify the activity in the other authority so that the LoPS Permit Authority can co-ordinate with them.

### **5.10 Severable Works**

- 5.10.1 The definition of emergency works in Section 52 of NRSWA provides that items of work which “cannot be reasonably severed” from the emergency works are regarded as part of them. The same test applies to urgent works.
- 5.10.2 Work which can be “reasonably severed” from the immediate activity must therefore be regarded as separate activities and classified accordingly.
- 5.10.3 Typically, immediate activities shall consist only of a repair to end the emergency, or restore the service, and complete the necessary reinstatement. Subsequent activities to provide a permanent solution are “severed” and subject to a separate Permit application.
- 5.10.4 If the promoter leaves the site after dealing with the immediate problem, including carrying out an interim reinstatement and closing down the site, and returns later for further activities - it is clear that these are “severed” one from the other. However, even where activities are continuous, the later stages which do not relate to the immediate problem cannot be treated as part of the immediate activity.



## **6 PROVISIONAL ADVANCE AUTHORISATIONS (PAAs)**

6.1 Regulation 11 provides that a Permit Scheme may include provision requiring a Provisional Advance Authorisation (“PAA”) for certain specified works in specified streets to be obtained as part of the application for certain classes of Permit.

6.2 PAAs are a means of enabling significant activities to be identified, co-ordinated 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 Section 54 of NRSWA.

6.3 It is important to ensure that PAAs can be properly considered and issued in the expectation that a Permit will ultimately be issued for the activities. The purpose of the PAA is to allow the activity promoter to advise that he has work to undertake and would like provisionally to reserve workspace on the highway, although in accordance with Regulation 11 (5) it will be made clear that the granting of a PAA does not guarantee that a Permit will subsequently be issued.

### **6.4 Activities or Works Requiring PAA**

6.4.1 It is a requirement of this Permit Scheme for PAAs to be sought for major activities or works but not in relation to other works which will only require a Permit.

6.4.2 As with Permits a PAA can only be sought in respect of works proposed in one street.

### **6.5 Timing of Application for PAA**

6.5.1 The PAA must be applied for, in relation to major works, not less than three months in advance of the proposed commencement date of those works or as agreed with the Permit Authority. The information required in support of an application for a PAA is set out below. Whilst the information is equivalent to that required in support of an application for a Permit it is recognised that very detailed information may not be known at this early stage.

### **6.6 Advanced Publicity**

6.6.1 Based on the information provided within the application for a PAA the Permit Authority will be able to confirm whether the proposed activity or activities have the potential to be especially disruptive to local residents businesses and/or road users. In such circumstances the Permit Authority will require the activity promoter to provide advance publicity to nearby householders or businesses, or to traffic or pedestrians using the road.



6.6.2 A Permit Authority cannot impose a condition upon a PAA and it is not possible to incorporate additional time beyond the dates when the road will be occupied for the major works within any subsequent full Permit in order to ensure that an effective advance publicity exercise can be carried out. Where the Permit Authority therefore concludes the Promoter must provide advanced publicity prior to the works commencing they will inform the Promoter of such at the PAA stage. When the subsequent application is made for the full Permit, the Promoter will be required to supply evidence with that application that the notification exercise has been carried out and this will be reflected in a condition upon the full Permit.

6.6.3 Where the details of the major works change to any significant degree between the time the advance publicity is carried out and when the Permit is applied for, and most particularly, where the dates of the works change significantly, then the Promoter will be required to carry out a further publicity exercise. The purpose of the exercise is to ensure that the changes are publicised and that the relevant members of the public and road users are made aware of those changes. This will then be reflected as a condition on the Permit.

### **6.7 Content of PAA Application**

6.7.1 An application for a PAA must contain the same matters required for a full Permit set out in Section 7. Reference may also be made to the relevant information set out in the Technical Specification for EToN.

6.7.2 Standard, Minor and Immediate activities do not require an application for a PAA.

6.7.3 PAA applications must contain the following:

- a) location of activity;
- b) proposed start and end dates (but see below);
- c) an outline description;
- d) times of working, including hours of the day and any weekend provisions;
- e) the road space occupancy;
- f) method of working; and
- g) traffic management.

### **6.8 Decision to give PAA**

6.8.1 The Permit Authority must respond to an application for a PAA within one calendar month from the date the application is received by the Permit



Authority. As with applications for a full Permit, set out in Section 7, the Permit Authority may either give the PAA, or refuse the PAA giving reasons.

6.8.2 If the Permit Authority does not respond to a PAA within the response time, the PAA, as with an application for a Permit, will be deemed to be granted.

6.8.3 The Permit Authority, when considering an application, for a PAA must act reasonably. Where the promoter has completed the application in full in accordance with the requirements set out in Section 6.7, there will be a presumption that the PAA will be granted unless relevant and material considerations in line with the NMD and objectives of the LoPS outweigh that presumption.

### **6.9 Fees**

6.9.1 Fees are addressed in Section 13. PAAs are described in the Regulations, the Statutory Guidance and the Code of Practice as part of an application and are therefore not separate from a Permit application. The power of a Permit Authority to charge a fee for an application for a Permit where the Permit Scheme requires a PAA to be obtained as part of that application is therefore considered to mean, in accordance with the guidance in paragraph 39 of the Statutory Guidance, that a charge will be made at the time when the subsequent application for the full Permit is made and not at the time when the application for the PAA is made.

### **6.10 Changes to Proposed Works Subject to PAA**

6.10.1 It is recognised that it may be difficult to be certain of the start date three months before the event. The proposed start date is regarded, as are all aspects of the PAA, as provisional and may be amended in the subsequent application for a full Permit.

6.10.2 In circumstances however where a PAA has been given but a full Permit has not yet been issued, and the proposals, including the proposed start and end dates change, the Promoter must inform the Permit Authority of the changes as soon as possible.

6.10.3 Following this the Permit Authority will inform the Promoter whether the changes mean either:

- a) that the changes are not significant so as to warrant a new application for a PAA;
- b) that the changes are significant so as to warrant a new application for a PAA; or
- c) that a PAA is no longer required and an application for a full Permit only will be required.



## **6.11 Subsequent Application for Permit**

- 6.11.1 Once a PAA is given the promoter is required to submit the relevant application for a full Permit at a date no later than ten days beginning with the proposed starting date set out in the PAA.
- 6.11.2 Where the Promoter is unable to fulfil the requirement in 6.11.1 then, following a request by the Promoter the Permit Authority may allow a further period within which the Promoter may submit the application for the full Permit.
- 6.11.3 Where the Promoter fails to submit an application for a Permit following and relating to a particular PAA within the relevant time period, then there will be a presumption against issuing a Permit applied for subsequently. In simple terms the PAA will be treated as ceasing to have effect and the Promoter will have to start the process again by applying for a new PAA unless the Promoter has the agreement of the Permit Authority to allow the Promoter to make an application for the full Permit.



## **7 PERMIT APPLICATIONS**

- 7.1 The minimum times within which applications must be made are set out in Section 8. Activity promoters are however encouraged to contact the Permit Authority early so that conditions can be discussed and, if possible, an agreement can be reached so that the application is approved quickly. Early applications will improve the co-ordination process and enable the Permit Authority to control better all the activities that take place on the highway.
- 7.2 The Permit Authority will ensure that existing and potential activity promoters can access the contact details of the persons dealing with applications by publishing the relevant information on the [www.londonstreetworks.net](http://www.londonstreetworks.net) website as referred to in Section 1.6. Promoters are again reminded that contact details can change regularly and activity promoters are encouraged to make full and constant use of that website.
- 7.3 Whilst the LoPS is a Common Permit Scheme, where an activity crosses the boundary between Permit Authorities, the activity promoter must apply for a Permit from each authority. Where an activity crosses the boundary between a Permit Scheme and an area where noticing under NRSWA is used, both systems will need to be invoked. However, fees are payable only to Permit Authorities.
- 7.4 In both cases, early discussion with all involved will help to avoid any conflicting requirements.
- 7.5 Method of Making Permit Applications**
- 7.5.1 Permit applications, wherever possible, must be made electronically using the EToN system, but where this is not possible, they may also be made by alternative means, i.e. by fax, post or hand delivery and must comply with the requirements set out in the Technical Specification for EToN. The Code of Practice for Permits states that by April 2009 all activity promoters must make electronic applications.
- 7.5.2 Applications containing the relevant information must be made within the timescales set out in Section 8 and are set out in the table at the end of the same Section.
- 7.6 Copies of Applications**
- 7.6.1 Permit applicants must also note that in accordance with Regulations 9 (9) and 11(6), the LoPS requires promoters applying for Permits or PAAs to provide copies of their applications to any authority or undertaker that has requested to see PAAs or Permit applications on certain streets. The Permit Authority will inform the applicant of this requirement following receipt of the application.
- 7.6.2 In addition, in accordance with Regulation 37 (7), which imposes the equivalent requirement (through an amendment to Section 93 of NRSWA),





the LoPS also requires copies of applications for activities in the vicinity of a level crossing to be sent to the relevant transport authority.

- 7.6.3 Where those authorities or undertakers do not have access to EToN applicants can comply with the above by sending copies of the applications either by e-mail, fax or by post.

## 7.7 Format of Permit Applications

- 7.7.1 The definitive format and content of both paper and electronic Permit applications is given in the Technical Specification for EToN, and all applications must comply. The system will be able to print a paper application after it is received, but it is emphasised that from April 2009 all applications should be made electronically. Those using paper systems must take particular care to code Permit applications appropriately.

- 7.7.2 The description of activities must be in plain English without any industry specific jargon. A standard description used consistently, with added text for exceptions, allows quicker analysis resulting in clearer information and helps authorities to co-ordinate activities.

## 7.8 Content of Permit Applications

### 7.8.1 The Street

An application shall relate to proposed activities in only one Street.

### 7.8.2 Detailed Description of Activity and Collaborative Promoters.

A detailed description of the activity, setting out what the works are and their purpose, must be provided to allow the Permit Authority to assess its likely impact (similar to that already required under NRSWA). In addition, where collaborative working is proposed the promoter must provide a detailed description of the collaborative scheme of works, the identity of the other promoter or promoters, how they may be contacted and a summary description of the work they propose within the collaborative scheme.

### 7.8.3 Location

- 7.8.3.1 Promoters must give an accurate location based on National Grid References (NGRs) for openings and excavations, along with the dimensions of the space taken up by the activity in the street. Where trenches are proposed then a NGR for each end of the trench must be included. Where a small opening or small excavation as defined in the Glossary in Appendix A is proposed, then a NGR in the centre of the opening or excavation must be provided.

- 7.8.3.2 As set out in Section 8.3.4 promoters must apply for a Permit within two hours of an immediate activity commencing or, in the case of the works commencing out of normal working hours, within two hours of the





commencement of the next working day as defined in the Glossary in Appendix A. Where the Promoter finds that the location in which they have started digging is not where the leak (or other emergency) actually is, a Permit is still required for those works because they have broken open the street. In such circumstances the promoter is required to have a Permit for the works already carried out and must apply for a variation of that Permit for:

- a) the first excavation in each further 50 metre band away from the original opening or excavation in the same street, i.e. 50-100 metres, 100-150 metres etc, measured from the furthest point of the original hole to the nearest point of the new opening or excavation. Separate variations for further excavations or openings will be required for bands going in opposite directions;
- b) if the search carries into a different street, i.e. a different USRN, or if the street changes to a different authority, then a separate Permit application is required.

### **7.9 Duration**

7.9.1 Each application for a Permit must include proposed start and end dates of the works which in effect will be the date from which the Promoter requires the road space until the road space is no longer required. For all streets, details of the times of day when the activity is to be carried out must also be provided, including any proposal to work at night. If the activity promoter proposes to undertake activity on weekends or Bank Holidays to speed up the activity and reduce disruption, then they must also say so. This information will be taken into account when imposing conditions on the Permit.

### **7.10 Illustration**

7.10.1 Activity promoters must provide an illustration of the activity with their application for a Permit where the activity is significant in terms of potential disruption due to the position and size of the activity. This means that all applications for major activities and for all registerable activities undertaken on the Transport for London Road Network (TLRN) and the Strategic Road Network (SRN) must be accompanied by such an illustration. Illustrations, where provided, should be based on an extract of the plan held by the activity promoter showing the location of their apparatus at the site in question.

7.10.2 For activities other than major activities, an illustration may also be required, as a small excavation at a critical junction may be equally as disruptive or much more so than a major activity. Where an application other than a major application is not accompanied by an illustration and the Permit Authority considers that it should, then the authority will respond as soon as possible setting out that the application has to be rejected in the absence of the illustration. The promoter will then be able to amend and submit a further application with the appropriate illustration.



7.10.3 The illustration must include details of the activity, whether it is likely to affect more than one lane of the street and, if possible, a Disruption Effect Score as set out in Appendix C. The Technical Specification for EToN provides appropriate details as to the form of such illustrations, but plans, digital photographs and similar would normally be required. How the illustration is to be transmitted can also be found in the Technical Specification for EToN.

7.10.4 Activities on those streets, or parts of a street, subject to a Special Engineering Difficulty designation will in any case require a plan and section as indicated in NRSWA Schedule 4 (2).

### **7.11 Government Security Zone - Notification to Police**

7.11.1 In London, for certain streets, it is required, for national security reasons, that the Metropolitan Police are advised before works commence. These streets are contained within what is known as the Government Security Zone (GSZ) and such information can be found on NSG and ASD information. It is a requirement that all activity promoters making Permit applications in respect of works within the GSZ indicate that they will advise the Metropolitan Police of the proposed works once the Permit has been granted.

### **7.12 Methodology**

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

### **7.13 Traffic Management, Parking and Traffic Regulation Orders/Notices**

7.13.1 Where traffic management proposals will be required as a consequence of the proposed works then a description of the proposals and when they will be instituted as part of the works must be provided in the application. Any requirement for action on the part of the highway authority such as the need to make Traffic Regulation Orders (TROs) or Notices, to suspend parking restrictions and to give approval for portable light signals, sometimes known as portable traffic signals (hereafter referred to as portable light signals), must be included or referred to, in the application. The costs associated with these are not within the scope of the Permit fees and will be separately applied.

7.13.2 Reference to the separate statutory requirements for TROs is set out in Section 17.

7.13.3 Other than immediate activities all activities requiring a TRO are categorised as major activities.

7.13.4 Activity promoters should familiarise themselves with the length of time that the relevant traffic authority needs to process such orders or approvals and build that into their application process i.e. they must apply early enough for the TRO to be made before works commence. It is expected that this will be at least six weeks beforehand.



- 7.13.5 Individual approval will be required, as has always been the case for portable light signals at activities across a junction, and requests for the use of portable light signals can be included in the Permit application for the relevant activities. However, for minor activities the minimum approval time for portable light signals (seven days) exceeds the minimum time for Permit applications and an earlier Permit application or separate signals approval application will be needed if both time periods are to be met.
- 7.13.6 Where parking bays are to be suspended, an application must be made to the relevant parking authority. This must be separate from any Permit application. It is important to fully consider the parking needs of people with disabilities when seeking the suspension of parking bays. Evidence of the agreement of the relevant parking authority must be included in the Permit application. If parking bays have been suspended, every endeavour will be made to approve the Permit for the same dates. However if this is not possible the Permit Authority will discuss this with their parking team on the activity promoter's behalf.
- 7.13.7 As indicated, if the advance approval notice period required for any temporary traffic restrictions is longer than that required for a Permit, such measures must be applied for separately and sufficiently early for the subsequent Permit to be issued under LoPS with the traffic management requirements assured. If this happens it will be necessary to indicate that this is the case on a Permit application, cross-referencing the earlier application for traffic management (including parking) by its unique application reference number.
- 7.13.8 In any event as referred to in Section 10 any subsequent Permit will reflect these matters.

### **7.14 Needs of People with Disabilities**

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

### **7.15 Depth**

- 7.15.1 Activity promoters must provide their best estimate of the excavation depth. While this might be expressed as a range, it must nonetheless provide a meaningful indication of the nature and extent of activity involved.
- 7.15.2 Parts of London fall into areas of Outstanding Archaeological Importance as defined by English Heritage. Works on these streets that are deeper than 1.5 metres from the surface level of the highway must be reported to English Heritage prior to works commencing. It is therefore a requirement that any



Permit application in respect of such works provides evidence that English Heritage have been consulted. Such information can be found on NSG and ASD information.

- 7.15.3 It will be presumed that any Permit application in respect of proposed works within an area of Archaeological Importance that does not include information as to excavation depth and notification to English Heritage means that all excavations will be at a shallower depth than 1.5 metres.

### **7.16 Site Maintenance**

- 7.16.1 The application must indicate what arrangements are proposed to maintain the site in a clean and tidy condition, including removal of any spillage of materials on the public highway, during and on completion of the works. Such arrangements must include the action that may be required to remove all spray paint markings of underground apparatus if such markings remain on site sixty days after the completion of the works.

- 7.16.2 Any subsequent Permit will reflect these matters.

### **7.17 Inspection Units**

- 7.17.1 The application must state the provisional number of estimated inspection units appropriate to the activity, in accordance with the rules laid down in the Inspections Code of Practice and associated Regulations.

### **7.18 Reinstatement Type**

- 7.18.1 The application must, wherever possible, indicate whether the activity is intended to be completed with interim or permanent reinstatement or a mixture of both. If it is the latter, then details must be provided as to where interim or permanent reinstatements will be completed within that Permit. This may prevent the need for a different activity Closing Notice under the provisions of Section 74 NRSWA.

### **7.19 Contact Person**

- 7.19.1 The application must include the name and contact details of the person appointed by the activity promoter to deal with any problems that may occur during the activity, including provision of an out-of-hours contact by the promoter.

### **7.20 Cross Boundary, Linked Applications and/or Permits**

- 7.20.1 As stated in Section 7.8.1 the LoPS requires a separate Permit for each street. In London, some USRNs may apply to a single street or streets that are partly maintained by separate London highway or Permit Authorities.
- 7.20.2 In circumstances where proposed activities are located in more than one Permit Authority's areas, an application must be made to each Permit



Authority. Where one or more of the authorities is not a Permit Authority then the NRSWA notice system will apply and be relevant only to that part of the street within that non Permit Authority.

7.20.3 The project reference must be included on every application so that the Permit Authorities can consider the impact and co-ordinate the activities together.

7.20.4 It must be noted that under no circumstances will an application containing activities in more than one street be acceptable.

### **7.21 Service of Permit Applications**

7.21.1 The application process starts when the recipient receives the application, not when it was sent. With electronic transfer, receipt should be almost instantaneous and it is assumed an application has been received at the time it was given, unless there is evidence to the contrary.

7.21.2 Where, after three attempts to give an application by EToN (duly recorded by the person serving the application or notice), the application cannot be given (for example because the distant server is down), notification must be given by telephone or fax for immediate activities with formal EToN application or notice following as soon as reasonably practicable.

7.21.3 If applications are sent by fax, it is assumed that they have been received when the transmitting equipment records satisfactory completion of the transmission.

7.21.4 In respect of applications sent by post, it should be noted that is not guaranteed that applications sent by first-class mail will be received the following day. Promoters must take this into account.

### **7.22 Advanced Publicity**

7.22.1 As referred to in Section 6.6 in respect of works requiring a PAA it may be considered necessary by the Permit Authority for the activity promoter to carry out an exercise publicising and/or informing members of the public and road users directly of the proposed timing and nature of the major works to which the PAA relates. Where a Promoter has been informed of such a requirement at the PAA stage, the subsequent application for a Permit must provide evidence that the relevant notification exercise has been carried out.

7.22.2 It is also possible that other proposed activities to which the LoPS applies have the potential to be especially disruptive to local residents, businesses and/or road users, despite not being major works. In such circumstances therefore it will be considered necessary for the promoter to carry out a similar exercise as referred to above, providing advance publicity to those members of the public who are likely to be affected by the proposed activities. The Permit Authority will be able to establish this either following informal pre-application discussions with the promoter or on receipt of the application and



will inform the promoter of the requirement and what form of exercise and extent the Permit Authority considers will be sufficient.

- 7.22.3 Applications in such circumstances will therefore have to provide evidence that the promoter has carried out the required exercise. This will be reflected in a condition on a subsequent Permit, see Section 10.



## **8 TIMING OF APPLICATIONS AND RESPONSES**

8.1 For effective planning and co-ordination, information needs to be provided to the Permit Authority in good time. In accordance with the advice contained in the Statutory Guidance, the LoPS provides for the minimum time periods before the proposed start date of an activity by which time the relevant Permit application needs to be made and a subsequent response made to the Permit applicant. In addition the LoPS recognises that it is equally important that any applications to vary existing Permits are made in a timely manner.

8.2 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 sent and received.

### **8.3 Minimum Application Times.**

#### **Major Activities**

8.3.1 In respect of major activities, as set out in Section 6, the LoPS requires promoters to apply for both a Provisional Advance Authorisation at least three months in advance of the activity and a Permit ten days before the activity is due to start.

#### **Standard Activities**

8.3.2 A Permit application for standard activities is required ten days before the proposed start date.

#### **Minor Activities**

8.3.3 A Permit application for minor activities is required three days before the proposed start date.

#### **Immediate Activities**

8.3.4 In order not to prevent activities that are necessary for emergency or urgent reasons, the LoPS provides that these works can commence and for an initial stage may be exempted from requiring a Permit. During this initial stage, Section 10.5 of this scheme is applicable. Promoters must apply for a Permit within two hours of the immediate activity commencing or, in the case of the works commencing out of normal working hours, within two hours of the start of the next working day and must telephone the Permit Authority immediately works commence on such streets where such a requirement is designated by the Permit Authority and which is shown by record 63 ASD designation.

#### **Non Compliance with Minimum Application Times**

8.3.5 Normally an application that is made outside of the minimum time limits will be rejected. Where it is not possible, however, for an activity promoter to adhere to the minimum application times then the Permit Authority may still





consider applications where there are mitigating circumstances justifying the failure to apply within the minimum times. The promoter must contact the Permit Authority and seek permission to apply outside of the timescales providing reasons why it has not been possible to comply. Such permission is solely at the discretion of the Permit Authority and will only be given exceptionally. Where permission is granted to apply out of time it will be recorded by the Permit Authority. Where permission is not granted and the application has been, or is still made, it will be refused.

- 8.3.6 In respect of applications to vary or extend Permits (see Section 11), applications must be made by the promoter a minimum of two days before the Permit expires or at a point when the existing Permit has more than 20% of its duration to run, whichever is the longer.
- 8.3.7 As where the activity promoter fails to apply for a Permit within the relevant time limits, the Permit Authority may consider applications to vary or extend Permits where the promoter is able to provide mitigating circumstances justifying the failure to apply within the minimum times. It will be relevant for the Permit Authority to take account of the need to avoid the activity promoter having to leave the project site unnecessarily. It should be noted, again, that permission to apply outside of the time limits is an exception to the rule (and any rule in the LoPS as to minimum time requirements) and is solely at the discretion of the Permit Authority.
- 8.3.8 In these circumstances the promoter should first telephone the LoPS Permit Authority, providing reasons to justify an application outside of the time limit in order to ascertain whether the authority is prepared to grant an extension to the time limit to make the application. Where the Permit Authority accepts that those reasons do justify the requested extension to the time limit to apply, the Permit Authority will record that agreement and the promoter should then apply electronically to the Permit Authority formally to grant the variation to the Permit.
- 8.3.9 As set out below the Permit Authority must respond to the application to vary the Permit within two days of receipt.

## 8.4 Maximum Response Times

- 8.4.1 In accordance with Regulation 16 time limits have been set out in the LoPS committing the Permit Authority to respond to applications within set periods. It is essential that a Permit Authority replies to Permit applications within the given response times. If it fails to do so, the Permit is deemed to be granted in the terms of the application. For the sake of clarity the maximum response time period will start to run on the next day following receipt of the application.
- 8.4.2 A “response” for the purposes of LoPS means a decision to grant or refuse a Permit. Where there are reasons why the Permit cannot or should not be granted in the terms applied for (e.g. because of insufficient or obviously incorrect information or because of a clash with other activities), the response





indicating that a Permit will not be granted in those terms will explain the reasons to the applicant, which will enable promoters to make a revised, compliant application.

### **Major and PAAs**

- 8.4.3 In respect of major activities the maximum response time for issuing a PAA is one calendar month from the date of receipt of the application and in respect of an application for a Permit, five days from the date of receipt of the application.

### **Standard Activities**

- 8.4.4 In respect of applications for a Permit for standard activities, the maximum response time is five days from the date of receipt.

### **Minor Activities**

- 8.4.5 In respect of applications for a Permit for minor activities, the maximum response time is two days from the date of receipt.

### **Immediate Activities**

- 8.4.6 In respect of applications for immediate activities the maximum response time is two days from the date of receipt however the works may continue throughout that period.

### **Applications to Vary**

- 8.4.7 In respect of applications to vary a Permit (there is no provision for the variation of a PAA) the maximum response time is also two days from the date of receipt.
- 8.4.8 As indicated previously, reference must be made to dates of receipt. An application for a PAA or Permit is therefore treated as properly made when it is received by the Permit Authority within the relevant time period and is treated as properly responded to when the Permit is issued or refused before the end of the relevant time period.
- 8.4.9 As referred to in the Statutory Guidance, “Days” in this context is a reference to working days, as defined in NRSWA and Regulations.

**Table 1 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)	Maximum response times		Response times to applications for Permit variations
	Application for Provisional Advance Authorisation	Application for Permit		Application for Provisional Advance Authorisation	Application for Permit	
Major	3 months	10 days	2 days or 20% of the original duration whichever is longest	1 calendar month	5 days	2 days
Standard	n/a	10 days		n/a	5 days	
Minor	n/a	3 days		n/a	2 days	
Immediate	n/a	2 hours after		n/a	2 days	

## 8.5 Grounds for Refusal

- 8.5.1 Whilst a Permit Authority cannot refuse legitimate activities, it can refuse a Permit application if elements of the proposed activity, such as timing, location or conditions are not acceptable when measured in accordance with the relevant factors as referred to in section 9 below. In such cases the authority should contact the promoter via a works comment as soon as possible and within the response period specified in Table 1, to explain precisely why the application is not satisfactory and which aspects need modification. This is not to be treated as a refusal of the application. If agreement can be reached, and if the timescale for a formal response to the application allows, the applicant can make a modified application with proposed conditions reflecting that agreement.
- 8.5.2 Where a modified Permit application is submitted, the date of the original application should be used for reckoning time periods for Permit applications. If agreement cannot be reached in the time available, the Permit Authority will have no option but refuse the Permit and require the promoter to make a new application, which would then be considered in the usual way.
- 8.6 An applicant may withdraw or cancel an application by way of an electronic works notice at any point up until the Permit Authority has either granted or refused the application. No fee will be charged for the cancellation or withdrawal of an application under these circumstances.



## **9 DECISIONS IN RESPECT OF PERMIT APPLICATIONS**

9.1 The Permit Authority in operating the Permit Scheme and in reaching decisions with respect to applications for a Permit must act reasonably and in particular will consider whether issuing the Permit will accord with the statutory duties to co-ordinate and to manage the network and the objectives of this Permit Scheme.

### **9.2 Permit Issue and Deemed Permit**

9.2.1 Where the Permit Authority is content with the proposal having taken into account all relevant matters set out in an application and any other material considerations, including ensuring the statutory duties to co-ordinate and to manage the network and that the LoPS objectives are met, it will issue a Permit to the activity promoter within the response times.

9.2.2 The Permit will contain the details provided in the application, including any associated documentation such as drawings, and any conditions imposed by the Permit Authority (see Section 10). It will be issued by electronic means.

9.2.3 Where the Permit Authority fails to respond within the response times then the Permit is deemed to be granted and in such terms only as reflected in the application. In such circumstances there will be no fee charged.

### **9.3 Refusal or Requests for Further Information**

9.3.1 Where the Permit Authority is not content with the proposal having taken into account all relevant matters as set out in the application and any other material considerations, including ensuring the statutory duties to co-ordinate and to manage the network and that the LoPS objectives are met, then the Permit Authority may;

- a) request further information to be submitted as part of the application before reaching a final decision as to the application and which request must be made within the response times; or
- b) refuse to issue the Permit giving reasons.

9.3.2 In both circumstances the promoter will be able to make modifications to its proposals to address the concerns raised by the Permit Authority and either make a further application in the latter scenario or modify the existing application in the former scenario.

9.3.3 Whilst the Permit Authority cannot refuse legitimate activities, it can refuse a Permit application if the relevant requirements for an application have not been complied with or elements of the proposed activity, such as timing, location or conditions are not acceptable and do not accord with the Permit Authority's statutory duties to co-ordinate and manage the network and the objectives of this Permit Scheme.



- 9.3.4 In all such cases the authority will contact the promoter as soon as possible, and in any event within the response period specified in Section 8, to explain precisely why the application is not satisfactory and which aspects need modification. If agreement can be reached, the applicant can make a modified application with conditions reflecting that agreement. Where a modified Permit application is submitted, the date of the original application must be used for reckoning time periods for Permit applications.
- 9.3.5 If agreement cannot be reached in the time available, the Permit Authority will have no option but to refuse the Permit and require the promoter to make a new application, which would then be considered in the usual way.

#### **9.4 Examples of Reasons for Refusal**

- 9.4.1 The following provide examples of matters that are likely to lead to applications being refused or subject to requests for further information or modification to address them.

#### **Overlapping Activities**

- 9.4.2 Where other activities are scheduled to take place in the same street, or other streets affected by the proposed activity, at the same time, the authority may refuse a Permit for the period requested but propose to grant it for different times. Information about some other activities is available to the promoter through the Permit register, so in such situations the promoter must contact the authority to discuss acceptable options before applying for a Permit.

#### **Timing and Duration**

- 9.4.3 An activity promoter must ensure when making an application for a Permit that the proposed duration of the activity takes into account both his legitimate need to complete the activity in an efficient and economic manner and the legitimate interests of other users of the highway.
- 9.4.4 The Permit Authority may query the proposed duration, for example on the grounds that:
- a) it can be completed more speedily or, that realistically, not enough time has been allowed; or,
  - b) that the specific dates and times proposed may clash with other proposed activities or events which occupy road space, in such a way as to be likely to cause an unacceptable level of disruption.

#### **Location of Activity**

- 9.4.5 A Permit must specify the location where the activity is to take place. The Permit Authority may refuse to issue a Permit due to the proposed location of the activity. This is a similar power to that under Section 56A of NRSWA i.e. where the location of a proposed activity is unacceptable to the authority



because the street in which the works are proposed is already heavily congested with underground services, or has an important traffic function, yet does not warrant protected street status.

9.4.6 Refusals on this basis would only apply:

- a) in relation to the installation of new apparatus - it cannot be used to require existing apparatus to be moved, or
- b) where disruption would be reduced by installing the apparatus in an alternative street where it is reasonable to use the alternative street or a different location within the same street.



## 10 PERMIT REQUIREMENTS & CONDITIONS

### 10.1 Requirements

#### Permit Period - Road Category and Traffic Sensitive Streets

- 10.1.1 A Permit is valid only for the period of time given on the Permit. This will, in most circumstances, be the period of time applied for by the activity promoter. As set out in Section 9.3 when considering the application the Permit Authority may consider an alternative period is appropriate. Where the activity promoter disagrees they may appeal in line with the dispute resolution procedure set out in Section 16.
- 10.1.2 On main roads (i.e. category 0, 1, and 2 streets and category 3 and 4 streets that are traffic-sensitive for all or part of the time), the start and end of the Permit period will match the start and finish dates for the activity. The promoter must not carry out any activity, including delivery and storage of materials on site, outside of these times without applying for and obtaining a Permit variation from the LoPS Permit Authority.
- 10.1.3 In relation to category 3 and 4 streets that are not traffic sensitive, Permit start and end dates 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 is five working days for major and standard activities and two working days for minor activities. This is in line with the validity period within the NRSWA notice system. Thus the start date on the Permit will be the planned start date for the activity but the end date allows for the possibility of the activity starting on the last day of the starting window, noting that the last day of the starting window would then be day one of the activity duration. The maximum activity duration will be specified in the conditions of the Permit.

#### Days of Work

- 10.1.4 The start and end dates will be in calendar days, even though many aspects of Permit Schemes will operate on working days.
- 10.1.5 Where a Permit allows working at weekends or on Bank Holidays, then the Permit start and end dates will also accommodate that, even if those days do not count towards the reasonable period under Section 74 of NRSWA or the starting window.

#### Form of the Issued Permit

- 10.1.6 A Permit will be issued in accordance with the formats given in the Technical Specification for EToN. The Permit will be sent to the promoter electronically through the EToN system wherever possible. The issued Permit will contain all relevant conditions so that there is no ambiguity about the validity and terms of the Permit. All Permits and PAAs will also be placed on the Permit register and, where applicable will be copied to any authority, undertaker and



relevant body that has asked to be informed about PAA approvals and permits on a particular street.

- 10.1.7 As required under Regulation 12, all Permits will be given a unique reference number (URN) by the Permit Authority, so as to provide an effective means of cross-referencing and assist in the compilation of the register. To the same end, the EToN numbering conventions will 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. The Permit Authority will also mark Permits with cross references to linked Permits and any separate approvals such as TROs which have been issued, where this is known.

### **Description of Activity and Location**

- 10.1.8 For all works it will be a requirement that a description of the activity which is to be permitted will be described clearly in the Permit.
- 10.1.9 For all works it will be a requirement that the road or street to which the Permit applies and the location within that road or street will be described clearly on the Permit.

### **Contact**

- 10.1.10 The Permit Authority must also provide its out-of-hours contact details on the Permit.

### **10.2 Conditions**

- 10.2.1 The LoPS makes provision for the attachment of conditions to Permits and also specifies the types of conditions that will be applied. In simple terms any Permit issued must set out in detail the activity it allows as set out in Section 10.1.8 and the conditions attached.
- 10.2.2 The approach that will be taken by the Permit Authority, when granting a Permit, is to reflect in the Permit, as far as is reasonable and practicable the description of the activity, its permitted duration and any other limits or constraints as provided in the application. The Permit Authority may also vary the conditions on a Permit after it has been issued as set out in Section 11.
- 10.2.3 Where the Permit Authority considers it necessary and appropriate to impose conditions that differ from the proposals in the application then the Permit Authority will state the reasons for this on its refusal of the Permit, the promoter can then choose whether to apply again or dispute the matter.
- 10.2.4 If it appears to the Permit Authority that a condition attached to a Permit has been breached then it may decide to impose sanctions addressed in Section 15. However it is the policy of every Permit Authority operating LoPS, as set out in Section 15, that, where appropriate, before taking any action the Permit Authority will contact, by works comment or e-mail, the activity promoter and





seek to discuss the matter before deciding to take action. Alternatively the Permit Authority has the power in such circumstances to revoke the Permit under Reg 10(4). The policy that will be applied is set out in section 12.

- 10.2.5 There are a number of standard conditions that will be imposed on all Permits, in addition this section sets out examples of a number of further possible conditions. Appendix D contains a number of model conditions reflecting the circumstances set out below. The conditions in Appendix D are only models, and may need adaptation to the circumstances of particular cases.

### **10.3 Standard Conditions**

The following standard conditions will be imposed upon all Permits.

#### **10.3.1 Display of Permit and Linked Permit Reference Numbers**

- 10.3.1.1 For all works it will be a requirement that the Permit reference number, when issued, must be prominently displayed at all times, on site for each phase of works on the site information boards. A condition in the form suggested in Appendix D Model Condition 1 will be attached to all Permits. This is to assist inspections, particularly in relation to the checking of conditions with which promoters are required to apply, and also to help identify the site for members of the public who may raise queries with Permit Authorities or activity promoters.
- 10.3.1.2 For all works Permits it is a requirement that, where there are any other linked Permits, references to those other linked Permits must also be included with the Permit. A condition in the form suggested in Appendix D Model Condition 2 will be attached to all Permits.
- 10.3.1.3 Variations to Permits, addressed in Section 11 must be denoted by the use of the same unique reference with a suffix to denote the variation.
- 10.3.1.4 Where remedial works are to be carried out following completion of permitted works a new Permit is required. This new Permit must contain a cross-reference to the Permit for the original activity. A condition in the form suggested in Appendix D Model Condition 3 will be attached to all Permits.

#### **10.3.2 Duration and Timing of Permits**

- 10.3.2.1 For all works it will be a requirement that the duration of the Permit (or period for which the Permit is valid) will be shown clearly on the Permit.
- 10.3.2.2 A condition in the form suggested in Appendix D Model Condition 4 will be attached to all Permits in relation to works on traffic sensitive roads however, where the Permit relates to works on non traffic sensitive roads a different condition will be attached as set out below.





- 10.3.2.3 As referred to in Section 10.1.3 the Permit start and end dates for works in relation to category 3 and 4 streets that are not traffic sensitive allow for flexibility in the start of the activity although it must be completed by a specific date. The start and end date of the Permit will therefore not simply match the start and finish dates of the activity. Therefore, in order to ensure that the works themselves commence within the starting window and will take no more than the total number of days the activity promoter applied for, which are not to be treated as having to be consecutive days, a condition in the form suggested in Appendix D Model Condition 4a will be added to such Permits

### **10.3.3 Reasonable Period for Section 74 purposes**

- 10.3.3.1 For all works the “reasonable period” for Section 74 purposes will be the same as the duration of the activity set out in the relevant Permit condition for the activity and will be recorded as such on the Permit.

## **10.4 Further Possible Conditions**

### **10.4.1 Limit on Days and Times of Day**

- 10.4.1.1 Where it is considered necessary and appropriate to limit the days and times of day when the works may be carried out a condition in the form suggested in Appendix D Model Condition 5 will be attached to the Permit together with Condition 4 or 4A.

### **10.4.2 Road Space**

- 10.4.2.1 The amount of space that activities in the highway occupy can have a major impact on congestion and disruption levels. Where the area required to carry out the actual work is relatively small then it may be that it will have little effect on traffic. However, where associated plant and excavated material take up a greater area, possibly resulting in lane restrictions and temporary traffic control measures, the impact could be magnified considerably.
- 10.4.2.2 In circumstances, therefore, where it is clear that there is likely to be disruption which can be minimised by the removal of plant that has become unnecessary and/or by the removal of excavated material the Permit Authority may impose a condition requiring swift removal of both plant and material, thereby reducing the area that is proposed to be occupied. In such a case a condition in the form suggested in Appendix D Model Condition 6 may be imposed.
- 10.4.2.3 Where it is necessary to prevent materials and plant being stored on site at all, a condition in the form suggested in Appendix D Model Condition 7 may be imposed.
- 10.4.2.4 Where it is considered necessary to limit the width and/or length of road space that can be occupied, including allowing for signing, lighting and



guarding - at any one time, during the period of the works, a condition in the form suggested in Appendix D Model Condition 8 may be imposed.

10.4.2.5 Where it is considered necessary to ensure that a certain width of road space is to be available to traffic (vehicles and/or pedestrians) at certain times of day, a condition in the form suggested in Appendix D Model Condition 9 may be imposed.

10.4.2.6 It is recognised that any conditions relating to the area of occupancy have to be realistic and allow for works to be carried out in compliance with statutory guidance and codes of practice, especially in relation to safety, and within the restrictions imposed by the available industry resources and technical capabilities.

#### **10.4.3 Needs of People with Disabilities**

10.4.3.1 The availability and safe use of road space and parking arrangements are particularly important for disabled persons. Where pedestrian ramps and temporary walkways are necessary as a consequence of proposed works, then it will be a condition of the Permit that all pedestrian ramps and temporary walkways are edged in yellow to assist those who have reduced sight. In such a case a condition in the form suggested in Appendix D Model Condition 9a may be imposed

10.4.3.2 In addition, while the Code of Practice for Safety at Street and Road Works indicates that one metre minimum width of footway must be available for pedestrians where footways are affected by works it will be a condition of the Permit that an absolute minimum width of 1.2 metres is maintained to facilitate the free passage of wheel chair users and powered scooters. In such a case a condition in the form suggested in Appendix D Model Condition 9b may be imposed.

#### **10.4.4 Traffic Management Provisions**

10.4.4.1 As set out in Section 7, activity promoters must submit details of any traffic management proposals with Permit applications. The way traffic is managed during the activity can have a major influence on congestion and disruption. For example a promoter may propose closing a road, and whilst this may be necessary in some cases, in others it may be possible, and less disruptive, to keep at least part of the road open. With smaller scale activities, portable light signals may be sufficient.

10.4.4.2 In such circumstances the Permit Authority may impose conditions that mean the permitted activities can only take place when the road, or relevant section of the road is closed to traffic or when portable light signals are in place. In such a case a condition in the form suggested in Appendix D Model Condition 10 or Appendix D Model Condition 11 may be imposed.

10.4.4.3 It must be noted that all uses of portable light signals require the agreement of the traffic authority. The relevant statutory provisions have been changed



in the Regulations accordingly. A condition may also be imposed reflecting shuttle working.

- 10.4.4.4 As set out in Section 7 if requests for the use of portable light signals, or for the suspension of parking restrictions have been made, this needs to be stated on the Permit application.
- 10.4.4.5 Where temporary traffic restrictions (e.g. TROs) are required as set out in Section 7 this must be noted within the application. These separate approvals will need to be in place before any of the proposed activity, or that part of the activity for which the approval is required, starts on site. In such circumstances a condition in the form suggested in Appendix D Model Condition 12 may be imposed. Activity promoters must first contact the highway authority if they think that a traffic order may be required.
- 10.4.4.6 It is possible that traffic management arrangements will change during the course of an activity. These changes can be included in the conditions where it is known that such changes will be needed. In such a case a condition in the form suggested in Appendix D Model Conditions 13 and 14 may be imposed.
- 10.4.4.7 It is a requirement of the LoPS that promoters at the application stage inform the Permit Authority when changes to traffic management measures are likely to be needed during the course of permitted works so that it can inform road users and implement complementary traffic management measures to minimise disruption. Where it only becomes apparent that traffic management measures are required after the Permit has been issued then the promoter must apply for a variation to the Permit and must contact the highway authority as soon as possible.
- 10.4.4.8 If the activity is in a street which is traffic-sensitive in some places and/or at some times and the application stated that the activity was to be outside the traffic-sensitive places and times, then this will be a condition of the Permit. If the activity then strays into traffic-sensitive areas and/or times, it will be outside the scope of the Permit and the authority will be able to take appropriate enforcement action. To ensure that the activities do take place outside traffic sensitive places and times the Permit Authority may impose a condition in the form suggested in Appendix D Model Condition 9.

#### **10.4.5 Methodology for Carrying Out Activities**

- 10.4.5.1 The method the promoter proposes to employ to carry out the activity can have a significant effect on the level of disruption. A LoPS Permit Authority may therefore attach conditions relating to the methodology the Promoter must use when carrying out the activities. It is recognised that in many cases the Permit Authority would not be in a position to make an engineering judgement, however the Permit Authority must be satisfied that minimum dig technology can be employed wherever practical to minimise inconvenience to the public and reduce congestion. In order therefore to be satisfied it is a



requirement that promoters set out in their applications the methodology they propose to use.

- 10.4.5.2 The Permit Authority will take account of the fact that site conditions may be different to those planned for in the application and the promoter may need to revert to other dig methods. In such cases an application for a Permit Variation would be required unless the Permit Authority decides that it is not necessary in the individual circumstances.
- 10.4.5.3 To ensure that the Promoter employs the appropriate methodology therefore the Permit Authority may impose a condition in the form suggested in Appendix D Model Condition 15.

#### **10.4.6 Advanced Publicity**

- 10.4.6.1 Where activities have the potential to be especially disruptive to local residents, businesses and/or road users, the Code of Practice envisages that Permit Authorities may attach a condition requiring the promoter to provide advanced notice to nearby householders or businesses, or to traffic or pedestrians using the road.
- 10.4.6.2 By its nature and in order to be beneficial such an exercise has to be carried out well before the activity commences, but as set out earlier where major works require such an exercise it is not possible to incorporate the period for publicity into the permit period, which solely reflects the activity duration. The requirement for such an exercise will be identified at the application stage in respect of all non-major works and at the PAA stage for major works in order to ensure that the activity promoter has sufficient time to carry it out. In respect of applications where advanced publicity is required the application will have to provide evidence that the exercise has been carried out.
- 10.4.6.3 The form of condition that may be imposed where advanced publicity is required may be in the form suggested in Appendix D Model Condition 16.
- 10.4.6.4 Where the activity promoter has to seek a variation or an extension to a Permit, the authority will have a further opportunity to attach such a condition, if the circumstances justify it. Again, the Permit Authority must act reasonably and such conditions will be local to the site and the activity.

#### **10.4.7 Environmental Factors**

- 10.4.7.1 Activity promoters must contact relevant highway authorities' Environmental Health Officers (EHO) when drawing up proposals that involve carrying out works during environmentally sensitive hours. That is, hours outside of 08:00 to 18:00 Monday to Friday and 08:00 to 13:00 on a Saturday (see Section 60 Control of Pollution Act 1974). This should ensure that wherever possible, and at reasonable cost, the requirements of the EHO's can be met.
- 10.4.7.2 The Permit Authority may need to impose environmental based conditions to protect residents or people working, as well as schools, close to the proposed



activities from disturbance particularly as a result of noise. This can be done by imposing conditions limiting the times of day when the permitted activities can take place, in such a case a condition in the form suggested in Appendix D Model Condition 5 may be imposed.

- 10.4.7.3 The Permit Authority may also need to impose environmental based conditions where there is concern about maintaining the site in a clean and tidy condition, including removal of any spillage of materials on the public highway, during and on completion of the works.
- 10.4.7.4 In such circumstances a condition requiring action at the end of any working period that the promoter must ensure that waste, whatever the source, must not be left on site may be imposed. In addition the condition may require the removal of all spray paint markings of underground apparatus. An adaption of Model Condition 6 in Appendix D would be appropriate in such circumstances.
- 10.4.7.5 Where trees will be affected by proposed activities, promoters must contact the Permit Authority's arboricultural consultants prior to making the application and any requirements they have must be referred to in the application and subsequently will be reflected in a condition.
- 10.4.7.6 A promoter considering burying plant and apparatus that is currently above ground, must contact any other utility with similar apparatus to see whether it wishes to share the underground facility. Again this must be done prior to making the application and any requirement to achieve it will be reflected on the Permit.

### **10.5 Conditions upon Immediate Activities before Permit Issued**

- 10.5.1 By virtue of the Regulations and as set out earlier, activities that are necessary for emergency or urgent reasons (i.e. immediate activities) can commence and continue for an initial stage without requiring a Permit to be obtained first. Nevertheless the Permit Authority has the power under Regulation 13 to impose conditions in such circumstances upon immediate activities for the period before a Permit is finally issued for the activity.
- 10.5.2 Activity promoters must apply for a Permit as soon as is practicable but at least within two hours of the immediate activity commencing or, in the case of the works commencing out of normal working hours, within two hours of the commencement of the next working day and must telephone the Permit Authority immediately works commence on such streets where such a requirement is designated by the Permit Authority and which is shown by a record 63 ASD designation.
- 10.5.3 Until a Permit is issued following an application for a Permit for an immediate activity, a promoter will be required to work within the terms of their application; for example if the application refers to specific working hours then the promoter must work within those hours.



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

- 10.6.1 As referred to in 10.2.5 standard conditions will be imposed upon all Permits regardless of promoter. In addition, the Permit Authority will impose further conditions upon a Permit in respect of works to be carried out by or on behalf of a highway authority in the same form and for the same reasons referred to above
- 10.6.2 In addition, in accordance with Regulation 10 (3) conditions on such Permits may also require the highway authority to consult with any person who has apparatus likely to be affected by the Permit works and require the highway authority to take all reasonably practicable steps to comply with any requirement made by that person which is reasonably necessary for the protection of the apparatus or for securing access to it.





## 11 PERMIT VARIATIONS

- 11.1 In accordance with Regulation 15 LoPS allows for the variation of Permits and the conditions attached to Permits. This is important as it allows the Permit Authority, operating the LoPS, actively to 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 the activity has commenced or during the activity itself. However applications by the activity promoter, if a variation is required, must be made before the Permit end date is passed as set out below.
- 11.2 As set out in Section 6 PAAs cannot be varied. In circumstances where a PAA has been given but a full Permit has not yet been issued, and proposals change, the activity promoter must inform the LoPS Permit Authority of the proposed changes and the Permit Authority will indicate whether or not a new application for PAA or Permit must be made.
- 11.3 In accordance with Regulation 15 (2) LoPS provides that applications by the activity promoter to vary a Permit or to vary Permit conditions must be made in the following way:
- a) 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; or
  - b) 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.
- 11.4 Activities can be particularly subject to change where an activity 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 LoPS seeks to avoid too many Permit variations, it is nonetheless important that the Permit Authority knows what is going on so that they can co-ordinate and manage these and other works in the area.
- 11.5 Therefore the LoPS provides that only in these fault-finding circumstances requiring a series of excavations or openings, and where the activities are immediate activities, the following arrangements will apply.



- 11.6 As immediate works, the promoter must submit the first Permit application within two hours of starting work. That first application will contain the location of the initial excavation or opening:
- a) for any further excavations on the same street within 50 metres 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.
  - b) the activity promoter will have to apply for a Permit variation for the first excavation in each new 50 metre band away from the original hole in the same street, i.e. 50-100 metres, 100-150 metres etc. The standard variation charges will be applied. Separate variations would be required for bands going in different directions along the street in question.
  - c) 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.
  - d) 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.
- 11.7 If the activity promoter cannot contact the authority by telephone they should record that and send the message electronically, for example via ETon.
- 11.8 The conditions imposed upon these activities can be varied, e.g. to take account of the fact that the new location, even if within the same 50 metre band, is in a potentially more disruptive location.
- 11.9 Variation at Permit Authority's Initiative**
- 11.9.1 In accordance with Regulation 15 (3) the statement of policy as to the circumstances in which a LoPS Permit Authority will vary Permits on its own initiative is set out below (the issue of revocation of Permits is addressed separately in Section 12).
- 11.9.2 One of the main features of LoPS is that it effectively allows road space to be "booked" by promoters for their activities. Once the Permit is issued it will provide the promoter with reasonable confidence that the 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 have to review the Permit and may lead them to conclude that the Permit or its conditions need to be changed.
- 11.9.3 Such changes however will be the exception and will only happen when the new circumstances could not have been reasonably predicted or where the impact is significant. Examples of such circumstances are where, roads are
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closed by floods, burst mains, a dangerous building or structure, or an unexploded bomb and significant traffic disruption has ensued or any further problems have arisen 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 then be necessary to vary the Permit for the activity e.g. by changing the time or manner of working.

- 11.9.4 The procedures which will apply in such circumstances are that the Permit Authority will first contact the promoter to discuss the best way of dealing with the situation whilst meeting the co-ordination duties and other statutory requirements of those involved. Hopefully those discussions will lead to an agreement on the variations required. The Permit Authority will either then issue a new Permit in those terms, or, by agreement, the promoter may apply for a Permit variation from which the authority will issue the varied Permit. The latter will be more appropriate if the promoter needs to reconsider elements of its plans within the parameters agreed with the authority.
- 11.9.5 If agreement cannot be reached, the Permit Authority will then vary the Permit to reflect the terms and conditions the Permit Authority considers appropriate. The promoter would have the option of invoking the dispute resolution procedure where it disagrees, set out in Section 16.
- 11.9.6 No fee is payable for Permit variations initiated by the Permit Authority, unless, at the same time, the promoter seeks variations which are not the result of the circumstances causing the authority's action. In that case a variation fee would be payable, subject to the exemptions in Section 13 addressing Permit fees.



## 12 REVOCATION

- 12.1 There is no mechanism in LoPS for formally suspending or postponing a Permit only for varying or revoking one. If the authority has to suspend or postpone an activity for which it has already given a Permit but which it intends must happen at a later date, it will use the Permit variation provisions, as described above, to change the dates.
- 12.2 If the activity promoter wishes to cancel a Permit for which it has no further use, it must use the cancellation notice provided in the Technical Specification for EToN containing the relevant Permit number. There is no fee for such a cancellation notice but there will also be no refund of the fee required for issuing the Permit or any PAA as set out in Section 13.
- 12.3 The Permit Authority can revoke a Permit at its own initiative, in particular, it has the power to do so under Regulation 10(4) where there has been a breach of a condition (which is also a criminal offence). In such circumstances the Permit Authority may use the provisions replacing section 66 of NRSWA to clear the street, if required, namely the provisions under Regulation 18 referred to below in section 15.
- 12.4 In accordance with Regulation 15 (3) the statement of policy as to the circumstances in which a LoPS Permit Authority will revoke Permits on its own initiative is as follows.
- (a) As with variations where circumstances arise which cause the authority to have to review the Permit, they may lead them to conclude that the Permit needs to be revoked rather than simply being varied.
- (b) Revocation will be the exception and will only happen when the new circumstances could have been reasonably predicted or where the impact is significant.
- 12.5 The procedures which will apply in such circumstances are that the Permit Authority will first contact the promoter to discuss the best way of dealing with the situation whilst meeting the co-ordination duties and other statutory requirements of those involved. The aim of those discussions is to try reach an agreement and if variation is a feasible option then, as set out in Section 11, an agreement as to the form of that variation. The Permit Authority will either then issue a new Permit in those terms, or, by agreement, the promoter may apply for a Permit variation from which the authority will issue the varied Permit. The latter will be more appropriate if the promoter needs to reconsider elements of its plans within the parameters agreed with the authority.
- 12.6 If agreement cannot be reached, the Permit Authority will then vary the Permit to reflect the terms and with the conditions the Permit Authority considers appropriate.



- 12.7 No charge will be made for revocation in such circumstances, i.e. where a Permit is revoked on the Permit Authority's own initiative and the Permit Authority will also refund the promoter the fee for issuing the Permit. However no such refund will be made where the reason the Permit is cancelled was as a consequence of any action or omission on the part of the promoter which would amount to a criminal offence as set out in Section 15.
- 12.8 In these circumstances, revocation will only be used as an alternative to criminal action, where it is reasonable, taking into account the nature of the breach and where it is proportionate.
- 12.9 Where the promoter disagrees with the Permit Authority's decision in any of the above respects, then the promoter would have the option of invoking the dispute resolution procedure set out in Section 16.



## **13 FEES**

13.1 In accordance with the provisions of Section 37 TMA 2004 and Regulation 30 Permit Authorities have the power to charge a fee for:

- a) the issue of a Permit;
- b) an application for a Permit, where the Permit Scheme requires a Provisional Advance Authorisation to be obtained as part of that application; and
- c) each occasion on which there is a variation of a Permit or the conditions attached to a Permit unless the circumstances are as described in 13.7.4.

13.2 A fee will be charged therefore for a PAA when the subsequent application for a full Permit is made, when a Permit or Variation to any Permit is issued and when Permits (or conditions on Permits) are varied subject to the circumstances set out in Section 13.7.

13.3 Permit fees do not include costs charged or recoverable by highway authorities in relation to consents or other requirements such as for Temporary Traffic Orders or Notices or parking suspensions related to other works being carried out.

13.4 It is not the purpose of fee charging under LoPS to generate revenue for Permit Authorities, although subject to the constraints set out below an authority may cover its costs.

### **13.5 Fees Payable**

13.5.1 In accordance with the Permit Regulations, LoPS authorities may charge undertakers but highway authorities are not charged. This is due simply to the fact that the money charged would only circulate around a highway authority.

13.5.2 To promote good practice Permit Authorities operating LoPS (and other highway authorities) are encouraged to use a shadow charging arrangement to show the cost of issuing Permits to its own activity promoters both to help understand its own costs and to set those alongside the costs to other promoters, but this is not a statutory requirement and it is not a requirement of the LoPS.

### **13.6 Level of Fees**

13.6.1 The LoPS has set out the Permit fees for each authority operating the LoPS in Appendix E.

13.6.2 The Secretary of State in making the scheme Order will have considered the fee levels and the justification for them as part of the application to operate



the LoPS and the approved figures are included in each of the LoPS scheme Orders.

- 13.6.3 The Regulations and Statutory Guidance set maximum fees that Permit Authorities may not exceed. The fees are structured to reflect the greater work involved in handling larger activities and busier roads.
- 13.6.4 With regard to the variation of Permits, the Regulations and Statutory Guidance set a maximum flat fee for Permit variations initiated by the promoter with a lower fee for category 3 and 4 non traffic-sensitive streets and a higher fee for category 0, 1 and 2 and traffic-sensitive streets.
- 13.6.5 If a Permit variation moves an activity into a higher fee category, the promoter will be required to pay the difference in Permit fee as well as the Permit variation fee.
- 13.6.6 All the LoPS fee levels are at or within the current statutory maxima.

### **13.7 Circumstances where no Fee will be Charged**

- 13.7.1 No fee will be charged in the circumstances described below.

#### **13.7.2 Cancellation of a permit**

- 13.7.2.1 No fee will be charged where, prior to the Permit Authority's determination, an applicant cancels or withdraws a permit application.

#### **13.7.3 Refusal of Permit or Variation**

- 13.7.3.1 When an application for a Permit or Variation is refused there will be no fee.

#### **13.7.4 Cancellation or Revocation of Permit**

- 13.7.4.1 No fee will be charged for the cancellation or revocation of a Permit as set out above. There will also be a refund of a fee already paid when the Permit is revoked on the Permit Authority's initiative except where the reason the Permit is cancelled was as a consequence of any action or omission on the part of the Promoter which would amount to a criminal offence as set out in Section 15.

#### **13.7.5 Variation of Permit at Permit Authority's Initiative**

- 13.7.5.1 No fee is payable for Permit variations initiated by the Permit Authority, unless, at the same time, the promoter seeks variations which are not the result of the circumstances causing the authority's action. In that case a variation fee would be payable.

#### **13.7.6 Deemed Permits**



- 13.7.6.1 Where the Permit Authority fails to respond to an application for a permit within the relevant response time and the permit is subsequently deemed to be granted, there will be no fee charged for issuing of the permit.

### **13.8 Permits for Collaborative Works**

- 13.8.1 As set out previously it is one of the main objectives of the LoPS to encourage collaborative working and trench sharing. In such circumstances, which must be set out in a detailed scheme of works at the application stage, there must be a Primary Promoter to take overall responsibility as the agreed point of contact with the Permit Authority. The Secondary Promoter(s) retain the same responsibility for submitting Permit applications for work to be carried out by them or on their behalf.
- 13.8.2 To avoid any ambiguity, the Permit Authority will issue Permits to each of the promoters involved, not just the Primary Promoter. All issued Permits will record the identity of the Primary Promoter and all the Secondary Promoters.
- 13.8.3 In such circumstances, where at least two or more promoters intend to collaborate their works-within the same site over the same period they should submit applications at the same time or ensure the applications are at least received by the Permit Authority within three working days of each other, beginning with the day on which the first application is received (see Regulation 31). In such circumstances none of the Permits will attract a Permit fee.
- 13.8.4 It must be noted however that if , some or all of those promoters then fail to co-ordinate their works in accordance with the detailed scheme of works set out in the way stated in the applications, the Permit of that promoter (be they primary or secondary) may be revoked, taking into account the circumstances. New Permits may then be required which will either be in the form of individual chargeable Permits or a further collaborative Permit structure which will again attract no fee but will risk further delay.

### **13.8.5 Phasing of Works to Lessen Risk and Inconvenience to Highway Users**

- 13.8.5.1 As set out in Section 4 where temporary reinstatement is required by the Permit Authority in particular to minimise risk to the public and allow safe passage for example, where works are sited on a street or road that will be used by people attending a sporting event, carnival, festival the works must also be treated as being phased and requiring separate Permits for each phase. The Permit Authority in these particular circumstances will not require a fee for issuing a Permit to return and complete the phase that was interrupted at the request of the Permit Authority.
- 13.8.5.2 To be clear therefore where works need to be phased for any reason other than as a consequence of the need to minimise risk to the public and allow safe passage, a fee will be charged for each Permit for each phase.

### **13.8.6 Highway Authority Works**

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- 13.8.6.1 As referred to previously, Permits required by the highway authority, although part of the scheme, will not attract a Permit fee. However operators of the Permit Authority will keep full records of all Permits issued and the fees that could have been paid in order to assist in the review mentioned in Section 13.9.1.

### **13.9 Fee Review**

- 13.9.1 It is noted that the Secretary of State may need to review fee levels particularly closely in the first years of Permit Schemes. This is with a view to ensuring that the overall income from fees paid by undertakers and activity promoters does not exceed the prescribed costs described in Regulation 29 (the costs of operating the Permit Scheme in relation to undertakers and activity promoters).





## 14 INSPECTION PROCEDURES

- 14.1 The procedures for dealing with all aspects of inspections under the LoPS will, with the exception of those related to overrun charges under Section 74 of NRSWA and Permit condition checks, reflect the procedures set out in the current Code of Practice for Inspections dated September 2002.
- 14.1.1 There are four types of inspections procedure set out in the Code:
- a) Sample Inspection;
  - b) Defect Inspection;
  - c) Investigatory Inspection; and
  - d) Inspection of works undertaken by licence under Section 50 NRSWA.
- 14.1.2 Inspections under the LoPS will follow the sample inspection methodology for assessing and carrying out all category A, B and C inspections which are those that are:
- A) Undertaken during the progress of the works;
  - B) Undertaken within the six months following interim or permanent reinstatement; and
  - C) Undertaken within the three months preceding the end of the guarantee period.
- 14.1.3 In addition inspection under the LoPS will include processes for dealing with any defective signing and guarding and for reinstatements; improvement plans; together with any costs that may be recoverable, e.g. sample inspections fees from the activity promoter.
- 14.1.4 The procedures for inspections dealing with Section 74 and Permit Condition checks are as follows:
- 14.2 Section 74**
- 14.2.1 These inspections are related to works that should have been completed by a due date or have been notified as having done so.
- 14.2.2 They will be randomly selected from works that fall into this availability so that the actual situation can be confirmed and as a combined total of 10% from the annual total number of actual number of inspection units, calculated using the method contained within the Code of Practice for Inspections. The individual fees charged will be as set down in Regulations from time to time by the Secretary of State and recharged using the same principles as for other sample inspections.
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- 14.2.3 LoPS Permit Authorities will run the overrun charging scheme alongside the LoPS under Section 74 of NRSWA as set out in Section 17.22

### **14.3 Permit Conditions**

- 14.3.1 These inspections will check for compliance with any Permit conditions that have been required under any particular Permit, for those conditions, which are not included in any other inspections procedures e.g. signing and guarding.
- 14.3.2 Similar to Section 74 checks, Permit Conditions checks will be randomly selected as a combined total of 10% from the annual total number of Permits, calculated using the method contained within the Code of Practice for Inspections, mentioned above.



## **15 SANCTIONS**

15.1 In accordance with the Statutory Guidance and the sanctions provided by the Regulations which Permit Authorities may use to achieve compliance with Permit Schemes, the policy of the Permit Authority as follows.

15.2 Where there is proof that any undertaker has committed a criminal offence the Permit Authority, where it is both practicable and appropriate, will contact the undertaker before taking action against the undertaker and seek to discuss the matter in order to establish whether such action is required

### **15.3 Criminal Offences**

15.3.1 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.

15.3.2 Permit offences apply only to undertakers and not to highway authorities. However Permit Authorities are required to monitor the performance of highway authority promoters to ensure a consistent approach and it will therefore be a matter of public record if a highway authority acts in such a way that would amount to the commission of an offence under Regulations 19 and 20 were it not the highway authority.

15.3.3 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.

15.3.4 These offences may be enforced in the following ways:

- (a) Fixed Penalty Notice
- (b) Prosecution

### **15.4 Fixed Penalty Notices**

15.4.1 Regulations 21 to 28 (and Schedules 1 and 2) authorise Permit Authorities to issue Fixed Penalty Notices (FPNs) 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.

15.4.2 A FPN may not be given more than 91 calendar days after the commission of the offence, beginning with the day on which the offence is committed. This is the maximum period allowed, but to improve co-ordination the Permit Authority, will, once it is decided that a FPN is to be given, do so soon as possible.

15.4.3 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.



- 15.4.4 FPNs shall be in the form set out in Schedule 1 to the Regulations (and in Chapter 18 of the Code of Practice for Permits) or in a form to substantially the like effect.
- 15.4.5 A FPN shall identify the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence. It must also state:
- a) the amount of the penalty and the period within which it may be paid;
  - b) the discounted amount payable in accordance with Regulation 25 and the period within which it may be paid;
  - c) the person to whom and the address at which payment may be made;
  - d) the method or methods by which payment may be made;
  - e) the person to whom and the address at which any representations relating to the notice may be addressed; and
  - f) the consequences of not making a payment within the period for payment.
- 15.4.6 The person specified under (c) shall be the Permit Authority or a person contracted to act on its behalf.
- 15.4.7 FPNs will be served electronically where possible. But other means of giving the fixed penalty notice are permitted.
- 15.4.8 If an undertaker wishes to receive FPNs by electronic means, it must tell the Permit Authority which method (e.g. EToN, e-mail or fax) and provide details of the EToN web service URL, e-mail address or fax number to be used as appropriate. Where an address for service using a particular method for transmitting an electronic communication has been given for receipt of FPNs and the Permit Authority has not been notified that the address is withdrawn then an FPN must be given by sending to that electronic address.
- 15.4.9 The Permit Authority will apply the three conditions set out in Regulation 5 (3) of the Street Works (Fixed Penalty) (England) Regulations 2007 when giving an electronic FPN, "the fixed penalty notice shall be –
- a) capable of being accessed by the person to whom it is being sent;
  - b) legible in all material respects; and
  - c) in a form which permits the notice to be retained for subsequent reference, and for this purpose "legible in all material respects" means that the information contained in the notice is available to



that person to no lesser extent than it would be if given by means of a notice in printed form."

- 15.4.10 An electronic FPN is deemed to be given on the day and at the time the transmitting apparatus records as being the day and time of satisfactory completion of the transmission, unless the contrary is proved. This is subject to Section 98 (2) of NRSWA (see below).
- 15.4.11 In all other circumstances, including system failures or if the Permit Authority has tried and failed to use electronic means, the fixed penalty may be given by alternative methods such as:
- a) delivering it to the person to whom it is to be given;
  - b) leaving it at his proper address;
  - c) sending it by first class post to him at that address; or
  - d) by any other agreed means.
- 15.4.12 For service of a fixed penalty notice in these circumstances, the "proper address" is the postal address given by the undertaker to the street authority for those purposes, or, the registered or principal office of a corporation, or the last known address of such person.
- 15.4.13 Section 98 (2) of NRSWA provides that a notice given after 16:30 on a working day is deemed to have been given on the next working day.
- 15.4.14 The Technical Specification for EToN includes a non-mandatory message type for sending an FPN using EToN.
- 15.4.15 In accordance with Regulation 27 if the Permit Authority considers that a FPN which has been given ought not to have been given, it shall give to the person to whom that notice was given a notice withdrawing the FPN. The notice shall be in the form set out in Schedule 2 of the Regulations (or in a form to substantially the like effect).
- 15.4.16 The Permit Authority in such circumstances will repay any amount which has been paid by way of penalty in pursuance of the fixed penalty notice.
- 15.4.17 The Permit Authority shall consider any representations made by or on behalf of the recipient of a fixed penalty notice and decide in all the circumstances whether to withdraw the notice.
- 15.5 Prosecution**
- 15.5.1 If the undertaker pays either the full penalty or the discounted amount within the required period, then no further proceedings can be taken against that undertaker for that offence.
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- 15.5.2 If the undertaker does not pay the penalty within the 36 days then the authority may bring proceedings in the Magistrates' Court for the original offence. Legal action must be taken before the expiry of the six months deadline from the date of the offence for bringing a case before the Magistrates' Court (Section 127 of the Magistrates' Courts Act 1980). This is the case even if the FPN was not given for some time after the offence was committed.
- 15.5.3 In circumstances where a Fixed Penalty Notice has been issued in relation to an offence, but the Permit Authority subsequently 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.
- 15.5.4 Further the Permit Authority may consider the most appropriate action in the circumstances is to proceed directly to prosecution of the offence.
- 15.6 Application of Money by the Permit Authority**
- 15.6.1 The Permit Authority may deduct from the fixed penalties received under Section 37 (6) of the TMA, the reasonable costs of operating the FPN scheme under which they are paid.
- 15.6.2 The Permit Authority shall apply any net proceeds to promoting and encouraging safe, integrated, efficient and economic transport facilities and services, to, from and within its area.
- 15.6.3 The Permit Authority will need to be able to demonstrate that the costs of running the FPN scheme are reasonable and that the net proceeds after deducting these costs are being correctly applied. Those enquiring should note that accounts are generated annually.
- 15.6.4 Although it is not a requirement that separate accounts should be kept for the FPN scheme, it should be possible to follow the audit trail to check income and expenditure for this scheme.
- 15.6.5 The Permit Authority and every Permit Authority operating the LoPS recognises that the FPN scheme is NOT intended to be an additional source of income for authorities, although some income may be generated incidentally. The objective of the FPN scheme is to enable highway authorities to manage and control activities better on the street and thereby contribute to the overall aim of the TMA, which is to minimise disruption from street works and will be operated with that in mind. LoPS authorities will therefore not expect any net proceeds emerging from the FPN scheme.
- 15.7 Regulation 18 – Discretionary Unauthorised Works Notices**
- 15.7.1 There is a discretionary power under Regulation 18 (1), by which a Permit Authority may instead of proceeding by way of the criminal sanction route, issue a notice. Such a power may be used where a person undertakes works without a Permit for which a Permit is required to have been obtained or
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breaches a Permit Condition. The Permit Authority will only issue such a notice where it is considered to be an appropriate response in the circumstances and not as a matter of course.

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

#### **15.8 Failure to take Remedial Action**

- 15.8.1 Where a notice is issued under Regulation 18 (1) and the relevant person has not taken the remedial action within the timeframe, the Permit Authority under Regulation 18 (3) may take such steps as it considers appropriate having regard to the original non-compliance, at the cost of the undertaker. The policy to be applied in such circumstances is that failure to comply with a Regulation 18 Notice within the relevant period will normally lead to such action being taken on the part of the Permit Authority.

#### **15.9 Other Offences under NRSWA**

- 15.9.1 Any offences relating to sections of NRSWA which run in parallel to Permit Schemes will continue to apply. These include offences relating to reinstatements, overrunning and failure to send appropriate notices.

#### **15.10 Revocation of Permit**

- 15.10.1 Whilst it is a criminal offence for an undertaker or someone acting on its behalf to undertake works in breach of a condition, as a further alternative to taking criminal action in such circumstances against the undertaker the Permit Authority has the power under Regulation 10(4) to revoke the Permit. This power is addressed in section 12.

#### **15.11 Keeping of Records**

- 15.11.1 The Permit Authority will keep records of all sanctions under LoPS. This information will be made available via the LoPS Business Task Force as outlined in Section 22.7.1.





## 16 DISPUTE RESOLUTION

16.1 The TMA provides wide powers to devise a suitable dispute resolution procedure and to identify the stages of the Permit application process at which it can be invoked. There are no prescribed statutory dispute resolution procedures as yet and the approach taken therefore is to build on arrangements which already exist through the Highways Authorities and Utilities Committee (HAUC UK) at local and national level for resolving disputes and are set out in the Code of Practice for Permits.

16.2 LoPS Permit Authorities will and activity promoters are expected to use their best endeavours to resolve disputes without having to refer them to a formal appeals procedure. This might, for instance, be achieved by referring the issue to management for settlement.

### 16.3 Incidence of Dispute Resolution

16.3.1 Two stages of the Permits process provide for dispute resolution:

- a) A promoter applies for a Permit, the Permit Authority makes it clear that it will only issue the Permit with conditions attached or with different dates than in the application, and may in fact issue a Permit in those terms. The promoter believes that one or more of these conditions are unreasonable or unrealistic. The two parties are unable to resolve their differences; or
- b) A promoter who has been issued with a permit and has started work realises that it will no longer be able to comply with the original Permit. It applies, therefore, for the Permit or its conditions to be varied or extended. The two parties are unable to reach agreement on any variation or perhaps, on whether any variation should be allowed.

16.3.2 Permit Authorities and Permit applicants should try, where ever possible, to resolve their disagreements between themselves. However, it is recognised that occasionally this may not be possible.

### 16.4 Appeals Procedure

16.4.1 The dispute resolution procedure for appeals under LoPS may be by way of dispute review, adjudication or arbitration.

### 16.5 Dispute Review

16.5.2 If agreement cannot be reached locally on any matter arising under any part of the LoPS the dispute will be referred for review on the following basis:

- a) Straightforward issues - Where the two parties consider that the issues involved in the dispute are relatively straightforward, the matter will be referred to impartial members of a regional HAUC