
STATUTORY INSTRUMENTS

2013 No. 2399

HIGHWAYS, ENGLAND

**The Traffic Management (East Sussex
County Council) Permit Scheme Order 2013**

Made - - - - 18th September 2013

Coming into force - - 11th November 2013

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

Citation and commencement

1. This Order may be cited as the Traffic Management (East Sussex County Council) Permit Scheme Order 2013 and comes into force on 11th November 2013.

Interpretation

2. In this Order—

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

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

Commencement of Permit Scheme

3. The East Sussex County Council Permit Scheme comes into effect on 11th November 2013.

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

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

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

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Signed by authority of the Secretary of State for Transport

18th September 2013

Norman Baker
Parliamentary Under Secretary of State
Department for Transport

SCHEDULE

Article 2

THE EAST SUSSEX COUNTY COUNCIL PERMIT SCHEME

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

THE PERMIT SCHEME

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1 INTRODUCTION

1.1 **Background**

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

1.2 **Relationship to NRSWA**

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

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

1.3 **The Permit Scheme**

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

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

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Permit for Standard Activities

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

Permit for Minor Activities

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

Permit for Immediate Activities:

Immediate Activities comprise:

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

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

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

- 'streetworks' replaced with 'activity'
- 'undertaker' replaced with 'promoter' and
- 'street authority' replaced with 'permit authority'

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

2.3 Phasing of Activities

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

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place on all those calendar days, and where the activity includes all setting up and clearing of the site and all associated storage.

2.9 Working Days

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

2.10 Restrictions on Further Activities

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

2.11 Charges for Over-running Activities

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

2.12 Relationship with NRSWA and Changes to Legislation

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

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3 HOW TO MAKE PERMIT APPLICATIONS

3.1 General

3.1.1 Co-ordination and forward planning information

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

3.1.2 Requirement to obtain a permit

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

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

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

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

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

3.1.3 Types of permit application

3.1.3.1 The Permit Scheme contains two types of permit applications:

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

3.1.4 Timing of permit applications

3.1.4.1 The timing of applications will vary according to the proposed activity. Larger activities and those taking place on busier roads, which thus have the potential to be more disruptive to road users, require more time and effort for co-ordination and planning and hence applications should be submitted earlier than the minimum period required by the scheme. Permit approvals will be based on

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- 3.5 *Applications Involving Other Interested Parties*
- 3.5.1 Parties other than the Permit Authority may wish to be informed about activities on a street. Such parties should make sure that their interest is entered in the ASD in the NSG.
- 3.5.2 Before making a permit application, promoters should check whether any parties have registered such an interest in the street. Where the ASD indicates other interested parties, applications for permits, PAAs and variations, and any response to them, must be copied to those parties. Electronic systems meeting the Technical Specification for EToN should deal with this automatically. However, some interested parties may not have access to the electronic systems so they should be sent copies by an alternative method.
- 3.5.3 In addition, within the Permit Scheme, NRSWA sections 88, 89 and 93 are amended as provided for in the Permit Regulations. These sections, along with s90 and s91, deal with notifications to bridge, transport and sewer authorities. The amendments ensure that the same consultation takes place prior to a permit application as under the NRSWA notice regime. The duties on undertakers in relation to streets with special engineering difficulty also remain under the Permit Scheme and the approval to plans and sections from the relevant authorities still has to be obtained. These procedures should take place before the permit application is made. The application should state that the consultation has taken place and where appropriate the necessary approvals have been obtained from the other parties.
- 3.5.4 Works for Road Purposes activity promoters must follow equivalent processes for activities under the Permit Scheme in such situations, and state that they have fulfilled the requirements of these sections in their applications.
- 3.5.5 The consultation requirements with Network Rail are the same as with the NRSWA. These are set out in Appendix C of the Code of Practice for Permits, published in March 2008. Promoters should make themselves aware of these requirements.
- 3.6 *Provisional Advance Authorisation Applications – Timing and Content*
- 3.6.1 The promoter shall apply to the Permit Authority for a PAA at least three months before the proposed start of major activities. This replaces the Advance Notice under s54 of NRSWA. Each permit for a major activity must have an equivalent PAA, i.e. one PAA per street.
- 3.6.2 A PAA must always specify proposed start and end dates. However, it is accepted that it may be difficult for a promoter to be certain of the start date three months before the event, so the proposed start date is regarded as provisional and may be amended in the application for a final permit.
- 3.6.3 While it is anticipated that under the Permit Scheme a granted PAA will normally carry through to a successful permit application, the granting of a PAA does not preclude the Permit Authority deciding not to grant a permit for the activity to which the PAA relates.
- 3.6.4 Permit regulations provide that failure to apply for a PAA can be used as a factor in deciding whether or not to grant a permit for a major activity. Under the Permit Scheme the absence of an application for a PAA for a major activity will lead to a presumption against granting a full permit for that activity. Following representation from a promoter the Permit Authority may if it is considered appropriate agree that a PAA is submitted and an early start agreed to enable the submitted permit to be granted.

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- 3.6.5 The information to be supplied by a promoter for a PAA is set out in the Technical Specification for EToN. Standard, minor, immediate, remedial and interim to permanent activities do not require an application for a PAA.
- 3.7 *Timing of Permit Applications*
- 3.7.1 The time requirements for submitting permit applications are set out in (Table 1 in 4.3).
- 3.7.2 **Special requirements for immediate activities**
- 3.7.2.1 The Permit Authority may designate streets that are particularly vulnerable to activity related congestion on the ASD, to indicate that the Permit Authority requires early warning by telephone of immediate activities on these streets immediately after the activity has been identified. Upon receipt of a telephone call, the officer concerned will issue an authorisation code number for the immediate activity. Where such a number is given, this number must be included on the subsequent electronic permit application. Only those streets that are most susceptible to unplanned disruption will be designated.
- 3.7.2.2 Any immediate activity can adversely affect traffic (including pedestrians) on the street with the activity and on other alternative routes onto which traffic may divert. Even if the street is not designated, where an immediate activity is likely to cause significant disruption, the promoter should telephone confirmation of the commencement of the activity at the earliest opportunity and in any event within 2 hours of the activity being identified.
- 3.7.2.3 Examples of situations where significant disruption is likely to occur include: immediate activities on traffic sensitive streets in traffic sensitive times; on streets where traffic is likely to be diverted onto a traffic sensitive street at a traffic sensitive time; on streets that are already in use as a diversion route. Promoters should be especially alert in such circumstances.
- 3.7.2.4 Permits for immediate activities can contain the same conditions as permits for other activities -subject to obvious variations, such as omitting when activities may start. The exact location may not be known when the application is made.
- 3.8 *Permit Start and End Dates and Activity Durations*
- 3.8.1 A permit will allow an activity to be carried out for a specific duration between the start and end date on the permit. An activity promoter working outside those dates would not have a valid permit and potentially would be committing an offence. It should be noted that if the work should start on a Monday and finish on a Friday, the subsequent weekend cannot be used as additional days without the express approval of the Permit Authority through a permit variation.
- 3.8.2 Section 74 of NRSWA still applies to statutory undertakers' activities and the noticing requirements of s74 still apply. The Highway Authorities own activities will be subject to equivalent notices. Therefore, when they began the activity the promoter would have had to submit the s74 Start of Works Notice (or highway activity equivalent) giving the actual start date of the activity. The duration (reasonable period) for s74 purposes must be the same as the duration given in the permit, unless the application granted by the Permit Authority has included a permit condition limiting the duration for s74 purposes to a period less than the permit period, or where a duration variation has been granted and the Permit Authority has issued a Duration Challenge to limit the Reasonable Period.

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

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

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

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

3.9.6 Illustration

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

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

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

3.9.7 Technique to be used for underground activities

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

3.9.8 Traffic Management, Parking and Traffic Regulation Orders

3.9.8.1 The activity promoter must supply details of traffic management proposals together with any requirement for action by the traffic authority including, but not limited to:

- the need for Temporary Traffic Regulation Orders (TTROs);
- the lifting of any parking restrictions; and
- notification or approval for portable light signals.

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

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4 ISSUE OF A PERMIT AND INCLUSION OF CONDITIONS

4.1 General

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

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

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

4.2 Granting Approved Permits

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

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

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

4.3 Response Times

4.3.1 The Permit Authority intends to respond to all permit applications and PAA applications within the timescales set out in Table 1 below. That response will be to approve the permit, or to refuse the permit. Prior to refusing the Permit Authority will contact the promoter to discuss possible variations to the permit or to seek further information or clarification about the application. If the further

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will contact the activity promoter as soon as possible, and within the period specified in Table 1 above, to explain precisely why the application is not satisfactory and which elements needs modification. If agreement can be reached, the activity promoter will be able to submit a modified application with conditions reflecting that agreement, and if necessary with an early start agreement to reflect the reduced notice period. Otherwise, the work may need to be rescheduled.

- 4.4.1.2 Grounds for refusing a permit must relate to the types of condition listed in Regulation 10(2) of the Permit Regulations, they may include the following but the Permit Authority reserves the right to invoke other grounds in appropriate circumstances:
- Timing and duration;
 - when the activity can be completed more speedily or, that realistically, not enough time has been allowed; or
 - when the specific dates and times proposed may clash with other proposed activities or events which occupy road space, in such a way as to be likely to cause an unacceptable level of disruption.
 - Overlapping activities – where other activities are scheduled to take place in the same street, or other streets affected by the proposed activity, at the same time,
 - Location of activity - the Permit Authority may refuse to issue a permit due to the proposed location of the activity. The Permit Authority will treat considerations of location in a similar way to the provisions under s56A of NRSWA.
- 4.4.1.3 In the event of refusing a permit, or requesting changes or further information, the Permit Authority will contact the activity promoter to discuss the application, as described above and will seek to agree an acceptable way forward. When an agreement is reached, the promoter must make a modified permit application. Where a modified permit application is submitted, and the original application has not been refused or deemed the later of the response time for the permit and variation will be used for reckoning time periods for responding to the application. Where the original application was refused, the modified application must be submitted as if it were a new application in terms of time scale or include an early start request.
- 4.4.1.4 If agreement cannot be reached in the time available, the Permit Authority will refuse the permit and the promoter must make a new application, which would then be considered in the usual way.
- 4.4.1.5 The activity promoter has a right of appeal if it is unable to reach agreement with the Permit Authority over the terms of the permit or the conditions. In the case of immediate activities it may be that work has to stop, if it is safe to do so, until the issues are resolved. The Permit Authority will decide on a case by case basis if that is necessary, but will always seek to discuss the situation with the activity promoter and will take into account all the relevant factors in coming to a reasonable decision . For full details of dispute procedures, refer to section 7 (Dispute Resolution) of this document.
- 4.5 *Permit Application Deemed to be Approved*
- 4.5.1 If the Permit Authority fails to reply to a permit application (approving or refusing the permit) within the response times given in Table 1 in 4.3, the permit will be

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deemed to be granted in the terms of the application. The proposed start and end dates, description, location, duration, etc. will be carried across into the permit and any condition in the application will become conditions for that activity. Those permit terms and the conditions will then be binding on the activity promoter as they would for a permit actively issued by the Permit Authority; breaching them will be an offence.

4.6 Time when a Permit is Valid

4.6.1 A permit is valid only for the period between the start date and end date (inclusive) on the permit.

4.6.2 On main roads (i.e. category 0, 1, and 2 streets and category 3 and 4 streets that are traffic-sensitive for all or part of the time), the start and end of the permit period will match the start and finish dates for the activity. The activity promoter must not carry out any activity, including delivery and storage of materials on site, outside of these times without applying for and obtaining a permit variation from the Permit Authority.

4.6.3 Activities on minor roads (i.e. category 3 and 4 streets that are non traffic-sensitive streets at any time) will be less disruptive. On these streets the promoter will be allowed some flexibility in the start date but once the activity is started it must be completed within the activity duration period specified in the permit. The start date will allow for a flexible window of 5 working days for major and standard activities and 2 working days for minor activities, from the initial estimated start date. The end date will be amended accordingly depending on the original duration. Noting that the last day of the starting window would then be day 1 of the activity duration.

4.6.4 The permit start and end dates will be in calendar days. This will prevent ambiguity as to whether the permit is valid, even at weekends or on Bank Holidays.

4.6.5 The permit terms will always include the duration of the activity which is automatically derived from the Start and End dates i.e. the number of consecutive calendar days that the activity can take place.

4.6.6 If the permit allows working at weekends or on Bank Holidays, then the permit start and end dates will accommodate that, even though those calendar days will not count towards the activity s74 duration or, on category 3 and 4 non traffic sensitive streets, the starting window.

4.7 Location and Description

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

4.8 Contact Details

4.8.1 Contact details for the activity promoter will be included on the permit.

4.8.2 The Permit Authority will provide its contact details, including the out of hours contact information, on its website.

4.9 Conditions Included in Permits

4.9.1 A permit granted by the Permit Authority will specify in detail the activity that has been allowed. Except in the case of an Authority-imposed variation, the entire promoter's information contained within the permit will be taken from the application, including any associated conditions.

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4.11 Conditions for Immediate Activities

- 4.11.1 Standard conditions will apply to immediate activities for the period before a permit is issued. Standard conditions will be published on the Permit Authority website and activity promoters will be notified of any new conditions at the quarterly SEHAUC meetings. Following discussions with the promoter, the Permit Authority may require additional conditions for individual immediate activities before a permit is issued.
- 4.11.2 All activity promoters carrying out immediate activities on certain designated streets are required to contact the Permit Authority, by telephone, immediately after identifying the activity. These designated streets have been indicated with an ASD record in the NSG.

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5 VARIATIONS TO PERMITS

5.1 *General Principles*

5.1.1 Within the Permit Scheme the Permit Authority has the powers under Permit Regulation 15, to review, vary or revoke permits and permit conditions. However, the Permit Authority is under no obligation to allow activities to continue beyond the permitted period.

5.1.2 A PAA cannot be varied. If a full permit has not yet been issued, and the activity promoter needs to make changes, then the promoter must inform the Permit Authority of the proposed changes and make a revised application for a PAA or permit. If the Permit Authority requires changes to the PAA then, after discussion with the promoter, the promoter must make a new application but in this case no fee will be charged.

5.2 *Variations Initiated by the Activity Promoter*

5.2.1 **For a variation – by promoters**

5.2.1.1 From time to time an activity promoter may need to apply for a justifiable variation to a permit and/or its conditions, including an extension of the agreed duration.

5.2.1.2 The purpose of the Permit Scheme is not to prevent necessary activity, so an application for a justifiable variation is likely to be granted, although the Permit Authority will consider the wider network implications of the changes and other relevant factors.

5.2.2 **Extensions**

5.2.2.1 The Permit Authority is under no obligation to let works run beyond the permitted period.

5.2.2.2 Whilst the Permit Authority will grant the extension to minimise disruption in many cases, there may be occasions where the activity promoter will have to vacate the street to allow other activities to take place and submit an application for a new permit to complete their activity at a later date. Plating of excavations may be appropriate where agreed with the Permit Authority.

5.2.2.3 Activities which exceed the duration in the permit without good reason will potentially be subject to overrun charges under s74 of NRSWA. In these instances, the Permit Authority may decide to extend the end date of the permit to allow the activity to be completed, depending on the co-ordination of other works in the area. However the reasonable period for s74 purposes will not be extended, and the issue of a Duration Challenge will enable s74 charges to apply even though a valid permit is in force.

5.2.3 **Illegitimate phasing of activities**

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

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

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5.5 Cancelling a Permit or Withdrawing a Permit Application

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

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7 DISPUTE RESOLUTION

7.1 Introduction

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

7.2 Appeals Procedure

7.2.1 If agreement cannot be reached locally on any matter arising in relation to the Permit Scheme, the dispute will be referred for review on the following basis:

7.2.2 Where the Permit Authority and the activity promoter(s) consider that the issues involved in the dispute are relatively straightforward, the matter will be referred to impartial members of SEHAUC (that is those not representing parties directly involved in the dispute) for review. That review should take place within five working days from the date of referral. The Permit Authority will accept the result as binding.

7.2.3 If the Permit Authority and the activity promoter(s) involved in the dispute consider the issues are particularly complex, HAUC (UK) will be asked to set up a review panel of four members - two utilities and two street authorities. One of the four persons will be appointed as Chair of the panel by the HAUC (UK) joint chairs. Each party must make all relevant financial, technical and other information available to the review panel. The review would normally take place within ten working days from the date on which the issue is referred to HAUC (UK). The Permit Authority will accept the conclusions of the review panel as binding.

7.3 Adjudication

7.3.1 If agreement cannot be reached by the procedure above, the dispute can be referred to independent adjudication. Adjudication within the Permit Scheme will only be used if both parties agree in relation to the matter under dispute, that

- the decision of the adjudicator is deemed to be final; and
- the costs of adjudication will be borne equally unless the adjudicator considers that one party has presented a frivolous case, in which case costs may be awarded against them.

7.3.2 Where the adjudication route is followed, the Permit Authority and the activity promoter(s) will apply to the joint chairs of HAUC (UK), who will select and appoint the independent adjudicator from a suitable recognised professional body.

7.4 Arbitration

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

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9 OVERRUN CHARGING SCHEME

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

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but all the ancillary work as well, such as stockpiling materials, setting up and disbanding traffic management and clearing the site.

10.4.3 A permit cannot be varied once it has expired. If a variation is necessary the activity promoter must apply in good time (see 5.2.5).

10.4.4 A promoter can begin immediate activities without a permit but must apply for a permit within two hours of starting work to avoid committing an offence. Once issued, the promoter is bound by the terms of the permit and its conditions. This supersedes the terms in the application and any previous generic conditions set by the authority. For further details of conditions for immediate activities refer to section 4.11.

10.5 *Breaching the Conditions of a Permit*

10.5.1 The conditions included in a permit will be recorded in the Permit Scheme permit register. If a permit is varied a new permit will be issued and any new conditions will be included and recorded. The Permit Authority will seek to ensure that conditions are precise so that both the Permit Authority and the activity promoter can easily check performance on site against the approved conditions.

10.5.2 Standard conditions will apply to immediate activities for the period before a permit is issued. These standard conditions will be posted on the Permit Authority website where they can be accessed by promoters. Following discussions with the activity promoter, the Permit Authority may decide to impose specific conditions for individual immediate activities before a permit is issued. These will be recorded on the register against the reference number given to those activities.

10.6 *Revoking a permit*

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

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

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

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

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

10.7.2.2 For offences: where it is possible for some corrective action to be taken.
If a noncompliance occurs, a notice may be issued under regulation 18(1) proposing the reasonable steps to be taken within a defined timeframe.
If action is not taken within the timeframe given in the notice, or subsequently agreed timeframe, the Permit Authority under regulation 18(3) of the Permit

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Regulations will take actions as appropriate to the original noncompliance at the cost of the undertaker

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

10.8 Other NRSWA Offences

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

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12 RELATED MATTERS

12.1 *Road Closures and Traffic Restrictions*

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

12.1.2 **There are two procedures;**

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

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

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

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

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

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

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

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

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

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

12.2 *Maintenance of Undertakers' Apparatus*

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

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

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14 PERMIT SCHEME TRANSITIONAL ARRANGEMENTS

14.1 Introduction

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

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

14.2 Transition from NRSWA Notices

14.2.1 The basic rules of transition will apply to all activities which would be covered by the scope of the Permit Scheme.

14.2.1.1 The permit regime will apply to all activities which come within the scope of the Scheme at the changeover date where the administrative processes for those activities, such as application for a permit or PAA, start after the changeover date.

14.2.1.2 Activities which are planned to start on site more than one month after the changeover date (for standard, minor and immediate activities) or three months after (for major activities) must operate under the permit scheme. This means that even if the relevant s54 or s55 NRSWA notice has been sent before the relevant changeover date, the promoter must cancel the NRSWA notice for that activity (or phase of activity) and apply for a permit. If the promoter has not substantially begun the activity (or phase of activity) by the time limit for the notice, 1 month or 3 months as appropriate, then again the promoter must cancel the NRSWA notice for that activity (or phase of activity) and apply for a permit.

14.2.1.3 Any other activities which started under the notices regime and which will start on site less than one month or three months after the changeover date (according to activity category) will continue under that regime until completion.

14.2.2 Given the advanced notice of the changeover there should be few activities where these rules will create difficulties. Activities co-ordinated in the run-up to the imposition of a restriction under s58 or s58A of NRSWA might be such a situation. In those few cases, the Permit Authority will discuss the situation with the promoters concerned to work out a practical way of dealing with the activities.

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Appendix A - Glossary

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

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

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Temporary Traffic Regulation Order	This means an Order made under section 1, 6, 9 or 14 of the Road Traffic Regulation Act 1984.
Traffic-sensitive street	This means a street designated by a street authority as traffic-sensitive pursuant to section 64 of NRSWA and in a case where a limited designation is made pursuant to section 64(3) any reference to works in a traffic-sensitive street shall be construed as a reference to works to be executed at the times and dates specified in such designation.
Traffic sign	As defined in section 105(1) of NRSWA, "traffic sign has the same meaning as in the Road Traffic Regulation Act 1984"
Trunk road	As defined in section 329 of the HA 1980,
Type 1 (or 2, or 3) gazetteer	As defined in the British Standard BS7666.
Undertaker	As defined in section 48(4) of NRSWA,
Unique street reference number (USRN)	As defined in the British Standard BS7666.
Urgent activities	Are defined in 2.2.8
Working day	As defined in section 98(2) of NRSWA,
Works	Street works or works for road purposes.
Works clear	A notice under NRSWA s74(5C) following interim reinstatement.
Works closed	A under NRSWA s74(5C) following permanent reinstatement.
Works for road purposes	As defined in section 86(2) of NRSWA,

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APPENDIX C - PAYMENT METHODS FOR PERMIT FEES AND FPNs

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

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

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

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

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

Therefore:

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

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EXPLANATORY NOTE

(This note is not part of the Order)

This Order gives effect to the East Sussex County Council Permit Scheme.

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

Article 3 gives effect to the permit scheme, which will come into effect on 11th November 2013. The permit scheme referred to in this article is set out in the Schedule to the Order.

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

A copy of the East Sussex County Council Permit Scheme is deposited and can be inspected at the offices of East Sussex County Council, Highway Offices, The Broyle, Ringmer, east Sussex, BN8 5NP and is available to inspect on the Council's website <http://www.eastsussex.gov.uk>.