

EXPLANATORY MEMORANDUM TO:

THE TRAFFIC MANAGEMENT PERMIT SCHEME (WALES) REGULATIONS 2009

This Explanatory Memorandum has been prepared by the Transport and Strategic Regeneration Department of the Welsh Assembly Government and is laid before the National Assembly for Wales in accordance with SO 24.1.

Description

1. The provisions for permit schemes in Part 3 of the Traffic Management Act 2004 (TMA) are intended to give highway authorities a more effective means of managing activities on the network by having a set of powers that can be applied to a wide range of activities as well as giving greater controls over those activities. The proposed Regulations will establish the framework for local authorities to set up and operate permit schemes. These schemes will provide the basis upon which the undertaking of works in streets, whether by utilities or highway authorities, will first require a permit. Where and when implemented they will supersede the current system where utilities give notice before undertaking such works.

Legislative background

2. The existing legislative framework for controlling activities in the street is contained in the New Roads and Street Works Act 1991 (NRSWA), the Highways Act 1980 (the 1980 Act) and the Traffic Management Act 2004 (TMA).

3. Part 3 of the Traffic Management Act 2004 (sections 32 to 39) make provision about the making and approval of permit schemes which are designed to control the carrying out of works in streets. Section 39(4) requires the first permit regulations to be made under the TMA to follow the affirmative procedures

The powers of the Secretary of State for Transport within the New Roads and Street Works Act 1991 and the Highways Act 1980 were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999. The powers within the Traffic Management Act 2004 were originally exercised by the National Assembly for Wales until the enactment of the Government of Wales Act 2006. Welsh Ministers now exercise all the above mentioned powers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006.

Purpose and intended effect of the legislation

4. These Regulations are needed to reflect changes in circumstances since 1991 and assist in fulfilling the Network Management Duty, which imposes a responsibility on local traffic authorities to manage their road network with a view to achieving, so far as may be reasonably practicable having regard to their other obligations, policies and objectives, the following objectives -

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

5. The Regulations provide for the creation and maintenance of a new register of permits that will provide, for example, a record of permits issued, varied, refused or revoked. It will also be a receptacle for the recording of other permit related information that will provide for a source of knowledge to be available to potential applicants for permits enabling them, for example, to time their permit applications having regard to anticipated substantial street works or to co-ordinate works with those proposed to be undertaken by other undertakers and by persons other than undertakers.

6. The objective of introducing permit schemes is to positively control works related activities¹ in the street that may cause disruption. This will allow better co-ordination and planning of activities, which should reduce the disruption and inconvenience that these activities cause, leading to reduced congestion and the realisation of associated social, economic and environmental benefits.

7. The Regulations will support the Assembly Government's policy on roads which is to "keeping traffic flowing as freely as possible across the network..." as set out in the document "Keeping Wales Moving (1998)".

8. Since the Regulations under the NRSWA were made, there have been a number of changes to the environment within which street works are carried out. The NRSWA did not anticipate the scale of works that would follow deregulation and increased competition for the various utility sectors and the scale of co-ordination required to manage the number of works being carried out in the streets each year. There are now more than 200 utility companies, who, as statutory undertakers, have the right to dig up the road. This is a significant increase on the numbers in 1991. In recent years, there has also been an expansion in the number of works required with a 30-year replacement programme for gas mains and initiatives to reduce the number of leaks from water pipes. Many of these involve replacement of apparatus installed in the 19th and early 20th centuries. This is in addition to the expansion of the communications network to meet demand for broadband and digital cable television.

9. Where permit schemes are brought into effect, they will effectively replace parts of the NRSWA,

- the notices related to s54 (advanced notice of certain works),
- s55 (notice of start of works) and
- s57 (notice of emergency works).

10. However, many other elements of the NRSWA remain and will continue alongside permit schemes, and in some cases they have been modified so that they can operate effectively with permits.

Implementation

11. The coming-into-force date for these Regulations is 1 June 2009.

¹ Activity in the context of permits refers to: street works as defined in s48(3) of the NRSWA; works for road purposes as defined by s86(2) of the NRSWA; other works that occupy the highway carried out by the authority in its capacity as a highway authority or traffic authority.

12. Should this legislation not be approved, the result would be unnecessary disruption to road users, local residents and businesses, and worsening congestion, safety and car pollution. It would also fetter the ability of local street authorities to fulfil their Network Management Duty.

13. The coming-into-force date for similar legislation for England was 1 April 2008.

Guidance

14. The associated Statutory Guidance and Code of Practice have been revised to take account of consultation responses, technological progress and to improve some of the processes.

15. Under the TMA the Welsh Ministers provide statutory guidance and this will be published at the same time as the Regulations, along with the associated Code of Practice.

Consultation

16. Consultations were undertaken and details are contained in the Regulatory Impact Assessment.

Regulatory Impact Assessment

17. A Regulatory Impact Assessment (RIA) follows:

THE TRAFFIC MANAGEMENT PERMIT SCHEME (WALES) REGULATIONS 2009

Regulatory Impact Assessment

Background

1. Activities carried out on the street by activity promoters² can lead to disruption and delay to all street users - the general public (pedestrians and motorists), businesses, public transport, etc. The intention is that a highway authority³ operating a permit scheme will be proactive in their co-ordination of all activities, both their own and those by other activity promoters. Under a permit scheme, a highway authority's own activities will be treated in exactly the same way as other promoters' activities with regard to co-ordination and the setting of conditions.

2. The NRSWA places a duty on the street authority to co-ordinate works of all kinds on the highway⁴. Equally important is the parallel duty on undertakers to co-operate in this process⁵. The NRSWA did not anticipate either the scale of works following from the deregulation of the various utility sectors or the associated scale of co-ordination required. Works carried out by local authorities and utilities have not always been registered or co-ordinated, which has had a major effect upon congestion and disruption of the highway. Also, there are now some 200 utilities with a statutory right to dig up the road, significantly more than in 1991. Furthermore, with six million more vehicles on the roads today than ten years ago, and more expected it, is more crucial than ever that we do all we can to tackle congestion.

3. In addition, under the 1980 Act, highway authorities and the Transport and Strategic Regeneration Department, on behalf of the Welsh Ministers, are responsible for the maintenance and improvement of their respective roads and accordingly carry out various activities on those roads.

4. The TMA introduced a network management duty on local traffic authorities to manage their road networks so as to facilitate the expeditious movement of traffic (including pedestrians)⁶. The statutory guidance for authorities in relation to the execution of their network management duty refers to the management of street works and highways works, and other activities on the highway, as one of the aspects of the duty. In addition, the network management duty also requires local traffic authorities to facilitate the expeditious movement of traffic on road networks managed by other traffic authorities.

5. Part 3 of the TMA contains provision for permit schemes. Sections 32 to 39 outline the basic framework within which permit schemes will operate and contain, in s37, power for the Welsh Ministers to make regulations to specify more detailed requirements. The relevant Regulations are those for which this RIA has been prepared i.e. the proposed *Traffic Management (Permit Scheme) (Wales)*

² Activity promoter: i.e. 'statutory undertaker' as defined in s329(1) of the Highways Act 1980 or highway authority

³ Under Part 3 of the TMA, permit schemes are to be prepared by highway authorities (as defined in section 1 of the Highways Act 1980). The highway authority will also be the street authority for the purposes of the NRSWA and the traffic authority under Part 2 of the TMA, in respect of which the authority has various duties and functions for the maintenance, management and operation of the highway or streets and for the co-ordination and regulation of activities that take place on them.

⁴ s59 NRSWA refers.

⁵ s60 NRSWA refers.

⁶ s16 TMA refers

Regulations 2009. Individual permit schemes will, however, be prepared by highway authorities (though they will not take effect until approved by the Welsh Ministers by Order).

6. Where permit schemes are brought into effect, they will effectively replace parts of the NRSWA, in particular the notices related to s54 (advanced notice of certain works), s55 (notice of start of works) and s57 (notice of emergency works), but many other elements of the NRSWA remain and continue alongside permit schemes, in some cases modified to operate effectively with permits. Part 8 of the Regulations contains the relevant modifications and disapplications of existing legislation which are to apply to streets covered by permit schemes. The Regulations do not allow permit schemes to apply to roads that are not maintained at the public expense⁷.

7. The key differences between permit schemes and the existing powers for managing activities on the street under the NRSWA are:

- authorities will be in a position to be more proactive in the management and control of activities taking place on the highway; permit schemes may be envisaged as schemes to book occupation of the street for specified periods for a specified purpose rather than the NRSWA system whereby the promoters are entitled to occupation of the street and must simply notify the highway authority of their intentions;
- highway authorities' own works are included within the permit scheme;
- conditions can be attached to permits which impose constraints on the way that work is carried out and information is provided, and can allow the authority to direct the timing of activities;
- the control that permit authorities have over variations to the permit conditions, particularly in the circumstances of extensions of time, give greater opportunity to deliver completion dates; and,
- a permit fee will be payable by the statutory undertakers. This fee will relate to the proportion of total costs incurred by a Permit authority that are attributable to statutory undertakers only. (ie the fee payable will not cover the cost of highway authorities' own works.)

8. Two types of bodies could be directly affected by the changes in the proposed regulations: (i) 23 highway authorities (Transport Wales and County Councils), and (ii) some 200 utilities who have the right to carry out activities in the street.

9. The extent of the effect on these bodies will depend on the take up of permit schemes. Authorities will not usually be obliged to run a permit scheme (though section 33(2) of the TMA allows for this) but must apply to the Welsh Ministers if they wish to do so.

10. These Regulations and Statutory Guidance set out the procedure for highway authorities to apply to the Welsh Ministers to run a permit scheme; set out certain requirements in relation to the content of such schemes; and make important provision for the effective working of the schemes in relation to matters such as fees, sanctions and publicity. These were drawn up following consideration by the permits working group (PWG) comprising representatives of the Department for Transport, Transport Wales, utility companies (from the gas, water, electricity and

⁷ Regulation 8(3) refers

telecommunications sectors) and highway authorities. A list of the working group member organisations is at Annex A.

11. The Transport and Strategic Regeneration Department is committed to ensuring that the overall impact of the TMA does not place unfunded costs on local government as a whole. Authorities seeking approval from the Welsh Ministers to implement permit schemes will need to demonstrate that the benefits and any income from fees outweigh the costs of the scheme.

Options

Option 1: Do Nothing

12. The Street Works (Registers, Notices, Directions and Designations) (No 2) (Wales) Regulations 2008 have been made and came into force on 1 April 2008. They apply to all statutory undertakers carrying out works in Wales. The regulations aim to improve traffic flow through better planning, co-ordination and effective noticing arrangements for statutory undertakers' works, which should reduce the disruption and inconvenience that street works subsequently cause; and will reduce the impact which street works can have on the surface of the roads themselves. They also set the framework from which assurance on quality and safety of street works flows.

13. To co-ordinate effectively the various activities carried out in their roads, authorities need information on the activities to be carried out: where they will take place, how long they will last, how extensive they will be, and how traffic in the vicinity will be controlled.

14. Under the NRSWA, utility promoters have a statutory duty⁸ to notify highway authorities of certain details of activities that they carry out, including their start and end date. The information should be accurate and provided to authorities with sufficient notice, so that a highway authority can consider how disruptive the activities are likely to be and if and how that disruption could be reduced.

15. The Assembly Government considers that while the NRSWA framework should ensure that highway authorities have the information they need in order to effectively manage their road networks, there are limitations in the approach – both in terms of the information which is provided to the highway authority about activities, and what the highway authority can do in the light of that information.

16. There are concerns that, while information is provided by utility promoters, it is often inaccurate, for instance, the wrong location is given for proposed activities or not given at all.

17. Utility promoters do not always notify highway authorities of changes to their original proposals except for revised duration estimates. This causes problems for effective planning and co-ordination making it more difficult for authorities to know whether other activities should be allowed to proceed.

18. Another perceived gap in the information flow arises because there is no equivalent obligation on highway authorities to issue notices in respect of works on the highway that they undertake. While this may involve the highway authority “notifying itself”, in practice there may be different parts of the authority responsible for undertaking activities on the highway and for discharging network management

⁸ ss54 to 56 of the NRSWA refers

duties. While it is expected that authorities should have good internal communications, difficulties can arise if the network management part of the authority is unaware of those activities.

19. Furthermore, highway authorities are restricted in what they can do with the limited information provided because it is only where serious disruption is likely to occur that they can direct utilities as to the timing of works. In other circumstances, the activities may proceed even if the highway authority would prefer that they were delayed for network management reasons.

20. By adopting the 'do nothing' option, the additional powers and tools to assist highway authorities to carry out their network management duties and better co-ordinate their roads will not be available. The disruption and inconvenience caused by activities in the street will continue as at present and, with increasing traffic, may get worse.

Option 2: Introduce Permit Schemes and Fees (chosen option)

Permit Schemes

21. It is envisaged that permit schemes will be of most benefit to those highway authorities that have high levels of congestion across their road networks. A commitment will be required by a highway authority to run a permit scheme and it may not be appropriate to all. Thus permit schemes will not be mandatory.

22. Establishing permit schemes would involve utilising the powers in Part 3 of the TMA to set up a system of permits in place of the NRSWA notice system. Under the permit system proposed by these Regulations, works cannot be undertaken on the highway without a permit, and conditions may be imposed by the Permit Authority in relation to works that are undertaken. The benefits of this option in comparison with the “do nothing” option are:

- the part of the highway authority discharging the network management duty function will benefit from improved information as a result of the obligation on highway authorities to obtain permits in respect of their own works;
- the quality of the information provided by utility companies to highway authorities will improve in view of the improved sanctions available – especially the practical sanction whereby if the information provided with an application is insufficient, the highway authority may decline the application and the works may not proceed without a permit;
- the highway authority will have power to attach conditions to all types of activities, which should assist in the management and co-ordination of activities on the highway.

23. The permit scheme approach increases focus on managing the road network. However, together with the new function of deciding whether or not to issue a permit allowing proposed works to proceed, it would take additional resources. Therefore, it is proposed that highway authorities should be able to charge fees in respect of the service provided in operating a permit scheme. These fees represent a cost to utility companies who will pay the fees. It should be best practice for highway authorities to

coordinate their work with that of statutory undertakers, including recording the work on a central IT system. These Regulations will formalize this practice.

24. The TMA provides considerable flexibility to prescribe in regulations, and influence through statutory guidance, how wide or narrow the scope of permit schemes should be. The consultation carried out in spring 2005 considered a range of options as to how schemes should be operated:

- whether there should be a standard permit scheme;
- which streets should permits schemes cover;
- what type of permit fees;
- what conditions should highway authorities be able to attach to the granting of a permit; and
- what type of Fixed Penalty Notice (FPN) regime.

25. These Regulations propose, a permit scheme that could:

- be prepared by a single highway authority in relation to its area only: or
- be prepared by more than one authority jointly, to operate over roads in their combined areas (joint permit scheme); or
- be developed by a number of authorities in an area or region with a single set of “rules”, but with each participating authority having its own separate permit scheme adopting those rules (common permit scheme).

26. Equally, a highway authority may choose not to operate a permit scheme but to continue to operate under the existing NRSWA notification system.

27. In developing these regulations and the accompanying Statutory Guidance which encompass all of the above, two main choices have been made in consultation with the PWG: (i) the way in which permit fees are set; and (ii) the degree of standardisation to be required across permit schemes.

Permit Fees

28. The Regulations provide for fees to be paid by utility companies for permits. Following the 2005 consultation, it has been decided that fees should not be payable by authorities for their own activities.

29. The TMA requires that the Welsh Ministers must try to ensure that the fees payable do not exceed such costs of operating the scheme as may be prescribed⁹. The prescribed costs are described in the Regulations as *'that proportion of the total costs incurred by the Permit Authority in connection with operating a permit scheme attributable to the costs of operating that scheme in relation to statutory undertakers'*

30. Fees are set in advance, before costs are fully known, and are therefore based on estimates. Transport Wales anticipates that adjustments may be made in subsequent years to offset any surplus or deficit. It is not intended that permit schemes should produce surplus revenue for a highway authority, taking one year with another.

⁹ s37(9) of TMA

31. When applying to the Welsh Ministers to operate a permit scheme, an authority must provide evidence to justify their application. In so doing they must quantify the benefits (social, economic and environmental) that they expect to be realised.

32. When considering applications Transport Wales will aim to ensure that authorities set permit fees at a level intended to cover only their prescribed costs. Also, a set of Key Performance Indicators (KPIs) have been developed by which permit authorities will be able to demonstrate that they are operating their permit scheme in a fair and equitable way.

Permit Fees Options

- *Option 1: Standard Permit Fee Model*

33. In the 2005 consultation it was proposed that there would be a standard set of permit fees across all authorities operating a permit scheme.

34. There are some benefits which could be derived from having a national fee structure, primarily as regards certainty for utility companies. However, highway authorities have different operational costs across their road networks. If a standard fee was introduced, it would exclude some authorities from operating a permit scheme as the fee would be too low to recover sufficient costs from other activity promoters. Conversely, a standard fee would also mean that some highway authorities with lower operational costs across their road networks could produce surplus revenue.

- *Option 2: Maximum Permit Fee Model (chosen option)*

35. An alternative approach discussed by the PWG, and consequently consulted upon, has been adopted instead. A maximum fee model is proposed, capping fee levels through the Regulations and Statutory Guidance.

36. As part of the application process to the Welsh Ministers a local authority will have to provide evidence and justify the level of fees proposed in operating a scheme in their area. Thus fees can differ from scheme to scheme within the maxima (see table 4 below at para 71). The negative aspects of option 1 should therefore be avoided. There could be a temptation for authorities to bid up to the maximum level but it is anticipated that this will not happen given that the Welsh Ministers must approve schemes before they come into effect (and have power to vary them)¹⁰.

Types of Permit Schemes

- *Option 1: Non-standard Permit Schemes*

37. The TMA provides flexibility in relation to what form a permit scheme system should take. It would be possible to be prescriptive or non-prescriptive in relation to the content of individual permit schemes.

38. If the Transport and Strategic Regeneration Department chose to take a non-prescriptive approach, there could be a wide range of non-standard permit schemes, which could lead to utilities having to adapt their operations to accommodate the specific requirements of individual schemes. This could result in significant complications and additional running costs.

¹⁰ ss34 and 36 of TMA.

- *Option 2: Standard Permit Scheme (chosen option)*

39. As set out in the Regulations and Statutory Guidance, the process for applying for a permit, and the activities to be covered by schemes, will have certain common features in all areas where a permit scheme is intended to operate. As well as providing consistency across permit schemes it will maintain some features in common with the noticing regime.

40. A highway authority will not be able to operate a permit scheme until it has submitted a formal application to the Welsh Ministers who may approve the application and give effect to the scheme by Order. As part of the application, a highway authority must provide evidence to justify the permit scheme (including the fee level). The Welsh Ministers will seek to ensure that only authorities which demonstrate the ability to operate an effective permit scheme (working within the Regulations and having had regard to the Statutory Guidance) will be granted approval.

41. Subsequent to the 2005 consultation, it was decided that a highway authority, under this option, may operate a permit scheme by:

- requiring permits for all roads, including minor roads, with each application being scrutinised individually; or
- requiring permits for all roads but with the permit applications on minor roads dealt with on an exception basis;
- requiring permits on main (e.g. traffic sensitive) roads, but using the new noticing regime on the minor roads; or
- requiring permits on minor roads (i.e. category 3 or 4) only but using the new noticing regime on categories 0, 1, 2.

42. Individual permit authorities have the discretion to decide what, if any, conditions are to be attached to each permit they issue (such as the dates on which the activity may or may not take place, or the way in which it is carried out). The types of conditions that authorities can include in their schemes are set out in the Regulations.

43. Subject to any conditions that may be attached, the permit will allow the promoter:

- to carry out the specified activity;
- at the specified location;
- between the dates and/or within the duration shown.

44. All the information related to a permit will be held on the authority's permit register.

45. The purpose of a permit scheme system is not to prevent the legitimate right of activity promoters and others to access their equipment, nor to prevent necessary maintenance to the highway itself by highway authorities but to better control such activities to minimise disruption and inconvenience.

46. Statutory Guidance for highway authorities preparing permit schemes has been developed, as has a Code of Practice which is intended to provide an overall view of how it is envisaged that permit schemes should work.

Costs and Benefits

Sectors and groups affected

47. The sectors and groups affected by these Regulations are:

- Highway Authorities
- Local Authorities
- Utility Companies (gas, electric, telecommunications, water)
- Public (road users, pedestrians, householders)
- Businesses, as road users and as frontagers

Benefits

48. Any activity carried out in the street has the potential to cause disruption depending upon how long it lasts, its location, its scale and how it is carried out. The benefits of being able to better control these activities are:

- reduced occupation of the road by activities helps reduce congestion and maximises the use of the existing network, improving reliability and making journeys more predictable as well as making them faster. This makes journeys easier to plan and reduces the amount of wasted or unproductive time;
- as congestion is reduced, pollution is also reduced, with benefits for air quality and other aspects of the environment;
- business can operate more efficiently through the quicker and more reliable delivery of goods, service of and access to customers etc;
- people are able to access their destinations more easily, saving time and effort;
- public transport can operate more reliably and provide a better service, potentially further relieving congestion on the road by attracting motorists onto public transport.

49. The fundamental difference between a permit scheme and the noticing system is that a permit scheme enables the highway authority to be proactive, to take charge and effectively manage and co-ordinate all activities (both those of utilities and its own) on its roads. This will enable better planning and co-ordination of activities and build good working relationships between authorities and utilities. It is this shift in responsibility, along with the new powers, that will enable all of the stated benefits to occur.

Economic benefits

50. The key benefit to be derived will be from reduced disruption on the road network. It is not possible to quantify the exact economic benefits at this stage, as this will depend upon how widespread the operation of permit schemes is, and how effective they prove in reducing disruption levels.

51. Two studies have been carried out in recent years to try to assess the level of disruption caused by works¹¹ in the street. Halcrow, an engineering consultancy, produced a report in July 2004 for the Department for Transport (DfT) which estimated the annual costs of disruption caused by utility works in England in the year 2002/03 at some £4.3 billion. No equivalent research has been carried out in Wales. However, on a pro rata basis, the cost of disruption would equate to £0.43m in Wales.

52. This RIA bases its assessment of benefits on this work. In response to the 2004 report, the National Joint Utilities Group (NJUG) commissioned Professor Phil Goodwin to review Halcrow's findings. This study adopted a different approach and concluded an estimated a £1 billion, as the cost of congestion caused by street works. Although there is a large variation, it does confirm that the economic cost of congestion has a significant impact on the operation of the road network.

53. DfT consider that the Halcrow calculation is the more robust because it draws on a larger disaggregated database. It is based upon the estimated annual number of street works of 1.1 million. This figure was extrapolated from a sample of 25 local authorities' notices and validated by the statutory undertakers. Halcrow have recently revalidated the number of works, and the estimate is now some 1.2 million works a year. There is no similar research for Wales, but with 120,000 works per year, the results of the research can be linked in proportion to the works carried out by Utilities in Wales.

54. NJUG estimate that the total number of works for their members is 2.4 million works a year. Discussions have taken place between DfT and NJUG to understand these differences. Halcrow have undertaken further work with NJUG which has validated Halcrow's analysis of the number of works. On this basis, the number of works by sector are shown in table 1 below:

| Table 1: Estimate of the number of works by utility sector a year | | | | | |
|--|-------------|---------|----------|---------|---------------------------------|
| | Electricity | Gas | Telecoms | Water | Total |
| Total | 234,250 | 223,000 | 243,800 | 498,950 | 1,200,000 (120,000 in Wales) |
| Source Halcrow Group | | | | | |

55. Halcrow provided detailed estimates of the disruption caused by individual works, which can vary according to a series of factors, such as the duration of the work, the traffic flow on the specific road on which they are carried out, whether the roads are single or dual carriageway, the size of the works and even whether works are carried out in rural or urban areas. They calculated that a works which is 50 metres long in an urban road with a daily traffic flow of 40,000 vehicles might cause £25,000 of disruption a day. In contrast, a 10 metre long works on a rural road with a daily traffic flow of 4,000 vehicles may, by comparison, only cause £335 of disruption a

¹¹ Works refers to street works - i.e. works in the highway by undertakers, usually utility companies or their contractors, to install or maintain apparatus in or under the highway.

day. Table 2 below shows the extrapolated delay cost associated for each utility sector, as calculated by the Halcrow methodology (for numbers of works estimated for 2002/3).

| Table 2: Cost of Congestion caused by street works by sector (pro rata on numbers of works by each sector) | | | | | |
|---|-------------|---------|----------|---------|-------------------------------|
| | Electricity | Gas | Telecoms | Water | Total |
| Congestion cost | £1,241m | £1,202m | £535m | £1,382m | £4,360m (£0.436m in Wales) |

56. Using Halcrow's figures, the possible direct economic benefits to road users (including businesses, private drivers and public transport users) to be derived by a reduction in disruption caused by utility activities by measures such as permit schemes (based on the number of works carried out in a year) are set out in Table 3 below. This does not include any assessment of a corresponding improvement in the operation of the local authority road works on the network which will result from better co-ordination and management of the road network. However, we would expect the benefits realised from the application of permits on highway authorities' works to be in line with those realised from utilities.

57. Table 3 shows the cost benefit that might be expected from running a permit scheme. It is considered that the better planning and control of activities that permit schemes should deliver will enable a greater reduction in disruption than that of noticing.

| Table 3 | | | |
|---|--|--------------------|---------------------|
| % reduction in congestion due to permits | Benefit for % of street works requiring permits (figures for Wales in brackets) | | |
| | 1% | 10% | 30% |
| 1% | £0.43m (£0.043m) | £4.3m (£0.43m) | £12.9m (£1.29m) |
| 2% | £0.86m (£0.086m) | £8.6m (£0.86m) | £25.8m (£2.58m) |
| 5% | £2.15m (£0.215m) | £21.5m (£2.15m) | £64.5m (£6.45m) |
| 10% | £4.3m (£0.43m) | £43.0m (£4.3m) | £129.0m (£12.9m) |
| The above estimate is based on 1.2 million works a year in England and 120,000 works a year in Wales. | | | |

58. Halcrow estimate that the increased powers from the TMA and NRSWA may provide a 10% improvement in the overall delay cost arising from street works. If the

introduction of permits was to deliver just a 3% reduction in congestion, then the benefits would outweigh the costs (see Annex B).

59. Whilst no accurate figures are available for the number of works carried out by highway authorities (as against utilities), it is generally thought to be a similar number. The disruption figures produced by Halcrow do not include disruption caused by an authority's own works, so on that basis the overall level of disruption caused by works and the benefits from reducing that disruption is likely to be higher than stated above. The better co-ordination and planning of road and street works together will lead to better management of the network and enhance the overall benefit of permit schemes.

60. These savings may be realised by:

- reducing the level of occupation associated with works. Doing less work is not an option as the amount of work is driven by customer or regulatory demand or the need to maintain the infrastructure. However there is an opportunity to undertake works in a more efficient manner with better planning and co-ordination between and within organisations. Better planning of works should also ensure that works sites are not left unoccupied and that the minimum occupation period is attained for each work;
- moving the period of occupation to a period where there will be less impact. It would be feasible to move a significant number of works into periods of lower traffic volumes, undertaking works at less disruptive times, thus reducing the overall delay cost. This may be where the most significant delay cost savings could be gained;
- moving the works to a location where there will be less impact. However as there will only be a very few works where such an approach could apply, there will be limited scope for achieving any delay cost savings by this means.

61. We anticipate that highway authorities in the larger urban areas, such as Cardiff, will apply to operate permit schemes. In such areas, streets are more congested and greater benefits from reducing congestion would be expected. The Transport and Strategic Regeneration Department is committed to reviewing the first permit schemes after a year of operation. This will provide evidence as to whether permit schemes are delivering the expected benefits, over what type of streets the greatest benefits are realised (i.e. minor vs. major roads) and how great the benefits are. It may be that, for example, savings could be made by focusing on specific works or specific types of works and that concentrating efforts on the works that contribute most towards the overall congestion cost figure will reap the best rewards.

Social and environmental benefits

62. As with the economic benefits, it is not possible to quantify the exact social and environmental benefits at this stage, as this will depend upon how many areas are covered by permit schemes, and how effective they prove in enabling better planning and management of activities.

63. In terms of social benefits, reducing disruption from activities means that:

- business can operate more efficiently through the quicker and more reliable delivery of goods and service of customers;
- people are able to access their destinations more easily and reliably, potentially reducing frustration, and saving time and money;
- public transport can operate more reliably, potentially further relieving congestion on the road by maximising the use of the existing network;
- emergency services have quicker access to emergency sites;
- better co-ordination and planning should reduce the duration of activities leading to reduced inconvenience to public and businesses;
- better coordination and the availability of better information about works and potential works should assist businesses and the public in planning and carrying out their journeys resulting in considerable reductions in travel costs and more reliable journeys.

64. The operation of a permit scheme would place the authority in a better position to publicise in advance any forthcoming activity:

- to forewarn the travelling public and transport operators of impending works, which would enable them to plan around them thereby saving time and money and reducing potential disruption; and
- to allow residents and businesses affected by the activity to be in a position to plan around them and minimise the impact.

65. There will also be environmental benefits in giving highway authorities greater control over utility activities and ensuring that they subject their own activities to equally high standards:

- reductions in disruption and congestion caused by activities will also mean reductions in pollution and emissions, including CO₂, which will benefit people living, working or travelling in the areas affected;
- reduction in inconvenience caused to the public and business where activity duration may be reduced ie reductions in the noise that activities create for those living or working nearby.

Costs

66. Permits schemes will impose additional costs on utility activity promoters who have to apply and pay for permits to carry out their activities in the street.

67. It will not be mandatory for highway authorities to run permit schemes, nor do we expect all highway authorities would wish to do so. Those authorities that choose to run schemes (if approved by the Welsh Ministers by Order) may incur additional costs even though they will not pay a fee for their own permits. These costs would arise from the improved communication within the authority including running a central IT system. However we would expect that many authorities are doing this already (see paragraph 18 above) and, as such, there may be no additional costs.

68. Estimating costs related to highway authorities' own permits is problematic as there is no robust information on the number of works carried out by highway authorities (as currently they do not have to record this information).

69. In applying to the Welsh Ministers to operate a scheme, an authority will be required to provide evidence that the cost of running the scheme will be offset by the expected benefits.

70. Also the highway authority, as part of the application process to the Welsh Ministers, will have to provide evidence and justify the level of proposed fees to be charged to utility promoters in operating the scheme in their area. In assessing the fee levels, Transport Wales will be guided by the Treasury’s Fees and Charges Guidance. We have committed to review the effectiveness of permit schemes a year after the first scheme comes into operation. This commitment includes reviewing the permit fee levels.

71. Table 4 shows the maximum fee levels proposed for different types chargeable to utility promoters.

| Table 4 | | |
|--|--|---|
| | Proposed maximum fee levels per permit or Provisional Advance Authorisation | |
| | Road category 0 - 2 & traffic sensitive | Road category 3 & 4 non traffic sensitive |
| Application fee for Major Activity permit (covering Provisional Advance Authorisation) | £105 | £75 |
| Major Activity permit issue fee | £240 | £150 |
| Standard Activity permit issue fee | £130 | £75 |
| Minor Activity permit issue fee | £65 | £45 |
| Immediate Activity permit issue fee | £60 | £40 |
| | | Provisional Advance Authorisation |
| | category 0, 1 and 2 and traffic sensitive streets | £40 |
| | category 3 and 4 non traffic sensitive streets | £35 |

72. A Permit Authority will be able to design their schemes to allow for discounts. This allows authorities flexibility to respond to different circumstances and possibly offer incentives for certain behaviours. This may apply when one or more promoters are collaborating to reduce the impact of their works. In order to encourage the widest possible co-operation in their permit schemes, Permit Authorities should provide that where highway authority promoters are collaborating with undertakers,

those undertakers will be eligible for a discount. The Regulations also prescribe for circumstances when no fee will be payable.

73. Annex C provides the rationale used in calculating these fees. The proposed permit fees have been developed with a sub group of local authorities and presented to the PWG. However a consensus was not reached between highway authorities and utility promoters for the level of fees and The Transport and Strategic Regeneration Department has taken account of the views of both sides in determining the maximum fee levels.

74. Where an authority chooses to operate a scheme, it will be able to offset the income that it receives in permit fees from utility promoters' activities against that proportion of the costs of operating the scheme relating to the utility promoters only. Authorities should not use permit fees to subsidise the cost of carrying out their network management duties. They will need to set the cost of operating the scheme in relation to their own activities against the benefits derived from running the scheme identified above. Evidence will need to be provided in a highway authority's application to the Welsh Ministers that the authority has considered this.

75. The fee payable for a variation to a permit will be set by reference to the category of road involved. The Statutory Guidance envisages that if a permit holder finds that they cannot comply with the terms of their permit, including any of the conditions attached - for instance if they cannot complete the work by a specified deadline or they wish to excavate a greater proportion of the road than originally proposed - then they should apply for the permit to be varied or extended.

76. The maximum variation fees have been set at a low level to encourage activity promoters to inform the permit authority of any changes at the earliest opportunity. It was considered that if variation fees were set higher, utility promoters may be disinclined to apply for a variation, creating problems if, when carrying out the activity, the original terms could not be met.

77. In a small number of cases varying the nature of an activity may push it into a different activity category. In that case, rather than just the appropriate variation fee being charged, it is envisaged that the activity provider would also be required to pay the difference between the two categories i.e. minor to standard. The additional cost this difference imposes would be the same (other than the variation fee) as the amount the person applying for the permit would have had to pay in the first place if it had assessed the extent and length of the activity correctly.

78. Permit applications must, wherever possible, be made electronically. The Statutory Guidance encourages consistency across all permit schemes with the requirements set out in the Technical Specification for Electronic Transmission of Notices (EToN). All applications must be made electronically by September 2009 for all statutory undertakers and highway authorities. Implementation of the Regulations for Street Works (Registers, Notices Directions and Designations) (No 2) (Wales) 2008 will require changes to both activity promoters and highway authority computer systems to accommodate EToN and therefore costs have been accounted for within that consultation. There may be some minor upgrades needed for those areas operating permit schemes but we do not consider that this will be significant to either activity promoters or highway authorities.

Balance of costs and benefits

79. The TMA imposes a number of duties and provides a number of powers for local authorities, all linked to the better management of their road networks with the aim of reducing congestion and disruption. Some of those duties and powers will involve authorities in costs. But within the TMA there are also potential revenues that can offset authorities' costs, although the TMA is, not in itself, a finance scheme.

80. It is recognised that individual elements of the TMA, such as permit schemes, will involve net costs for utilities. In this case it is important to look at the overall costs against the benefits. The benefits of permit schemes are essentially economic, environmental and social rather than financial. Resulting in better network management and reduced disruption and are provided to the whole community and country, rather than solely to the narrow interests of the industry.

81. Permit schemes have the potential to bring benefits to road users, local residents and businesses through better control and planning of potentially disruptive activities in the street. They also offer the possibility of a less fragmented way of administering such activities than at present. Set against that, if permit schemes are not efficiently operated there is a risk that they could increase costs for those operating them and those obliged to apply for permits and their customers, without realising corresponding benefits.

82. The details of how schemes will work have been drawn up to reflect the fact that the level of input required, both by those operating schemes and those having to apply for permits, will be greater in relation to those activities which have the greatest potential to cause disruption. For example permit applications for the more major schemes are required further in advance than for smaller schemes. This should ensure that schemes deliver the greatest benefits in terms of reduced disruption.

83. There is a cost involved in introducing and operating a permit scheme. Fees will be set at a level intended to cover the additional cost of running the proportion of the scheme attributable to utility activity promoters, beyond the costs of running the parallel coordination regime based on notices under the NRSWA. It is not intended that they should produce surplus revenue for the highway authority.

84. It is likely that a percentage of the costs (based on an efficiently run business) incurred by utility companies in the payment of fees will be passed on to their residential and business customers through utility bills. This is an issue for the Regulatory bodies.

85. Utility promoters will need to pay for permits for those of their activities that are subject to permit schemes. The additional costs to them will fall into two categories:

- the permit fees themselves; and
- any changes required to their operating systems to allow them to apply for and handle permits.

86. The overall costs imposed on utilities by permit fees will depend upon a series of factors. Firstly, the number of authorities approved to operate permit schemes. There are 22 highway authorities that would be entitled to apply to operate a permit scheme. In addition, the Welsh Ministers are also able to operate a scheme on the road networks for which they are responsible. It is not possible at this stage to estimate how many authorities will either apply to operate schemes or be approved to do so.

87. The second factor is how many activities will be carried out that will require a permit. Again, it is not possible to estimate with any certainty the level of activities which will be carried out in the future. Detailed figures from the Halcrow study are available for activities carried out annually between 2001/2 and 2003/4. Because the Street Works (Registers, Notices, Directions and Designations) (No 2) (Wales) Regulations 2008 make a series of changes to how different activities are classified and permit fees are based on these categories, it is not possible to calculate the exact total cost which the payment of fees would impose on promoters in the future. That said, the Halcrow figures suggest that an average of 7,500 (5454 in Wales) utility activities were carried out in each authority area in 2003/04. The costs for individual promoters will also vary according to the different nature of the activities that they carry out, given the differing fee levels for different activities.

88. The indicative costs imposed by running permits schemes incurred by utilities, based on the maximum fee levels set out in table 2, are outlined at Annex B (see also Annex D). It is estimated that if 30% of street works require permits, the cost to utilities could be £36.3m (£3.63m in Wales). If compared to the benefits from reduced congestion at table 3, a 3% decrease is estimated to deliver a £38.7m benefit (£3.87m in Wales). These benefits are estimated on utility promoters' activities only and may be expected to increase if all activity promoters' activities are included.

89. The differing levels of maximum permit fee for different types of activities are deliberately set so that the higher charges fall on those activities more likely to cause significant disruption (such as the example at para 55 causing disruption to the value of £25,000 per day), where the permit authority would need to consider their impact more closely. Different fee levels provide the permit authority with an opportunity to encourage utility companies to carry out activities in a less disruptive and quicker way. If it were possible to reduce the duration of an activity (for instance so that it lasted nine rather than 11 days) then this might mean it would be come under a lesser activity category in Table 3, ie "standard" rather than "major" activity, in which case, the fee which the undertaker had to pay would also be lower.

90. To use the example at para 55 again, if a permit authority was only content to issue a permit on the basis that the work was completed in seven days rather than the eight the promoter was proposing, and the activities were completed to that new deadline, then the amount of disruption caused by the activities could be reduced by £25,000.

91. The TMA has put a requirement on highway authorities to positively manage their networks and also to take note of neighbouring networks. This positive management must be focussed on minimising delays and inconvenience to all highway users who have had that network provided for their own travel purposes and for which undertakers have been granted the right to use the network for the distribution of their services. Thus the main beneficiary is society as a whole and will be seen by:

- an improvement in information as a result from taking a positive approach to issuing permits. Refusal to issue permits where information is incorrect or incomplete is thought to be more effective than giving fixed penalty notices;
- the improvement in information will, over time, help to reduce costs borne by the highway authority as the checking of permit applications can be

reduced to those checks required to concentrate on co-ordination, minimising of disruption etc;

- permit applications more accurately reflecting the works being carried out, again, enable the local highway authority to concentrate their resources on actual activity requirements not possible requirements (ie notices for works that are eventually cancelled or abandoned);
- the general change in culture within the industry that will be necessary to meet permit requirements provides an opportunity to improve overall the whole approach to working on the highway. This, in turn, gives the opportunity to move forward in providing accurate and positive information to all users of the public highway, thus reducing the negative reputational views currently expressed.

92. On balance, the Assembly Government believes that the benefits that permit schemes could deliver through reduced disruption for all road users, better value for money for road maintenance expenditure and reduced negative environmental effects outweigh the additional costs which schemes impose on utilities carrying out activities.

93. The Assembly Government intends to evaluate the operation and details of permit schemes after the schemes have been in operation for 1 year, to ensure that the right balance has been struck between costs and benefits, and to see whether any changes to the scheme may be needed (including in relation to the level of permit fees). The Welsh Ministers have power to vary or revoke a permit scheme under s36 of the TMA and can use this power to make any changes to schemes they consider appropriate (following consultation) in the light of the review.

94. The work undertaken by NJUG indicates that there will be a significant cost to the utility sector of implementing these Regulations. This is based on an estimate of the number of works undertaken by each sector. These figures have been difficult to compile but NJUG estimate that the total number of works for their members is 2.4 million works a year. This seems high compared with figures from the earlier Halcrow study that estimated 1.2m works a year for all utility sectors. If the number of works is higher, and further validation of Halcrow's methodology disputes this, the costs of congestion would increase. Assuming a linear relationship between the number of works, and the associated congestion, the Halcrow calculations would suggest a minimum congestion cost of £8.6 billion (£0.86 billion in Wales).

Competition Assessment

95. DfT have carried out a competition filter test on the likely effect of the Regulations.

96. The Regulations would affect four sectors within the private sector relating to management of the infrastructure of services: (i) water utilities, (ii) electricity utilities, (iii) gas utilities and (iv) telecommunications utilities.

97. Water and electricity companies (such as Welsh Water and EDF Energy respectively) operate on a regional basis, rather than in direct competition to each other. In the water sector companies operate local and regional monopolies. In the electricity sector, the distribution businesses operate on a regional basis, rather than in direct competition with each other. The gas sector has regional distribution networks that operate as regional monopolies similar to the electricity companies.

Given that, the Welsh Assembly Government do not believe that the Regulations would have a significant effect on competition in any of the three sectors.

98. The telecommunications sector has been deregulated since the privatisation of BT in 1984 and different companies are in direct competition with each other in relevant areas such as residential and business access. OFCOM has found that BT has Significant Market Power in these areas, with around 80% of the UK market.

99. The Welsh Assembly Government do not believe that there would be implications for competition in establishing permit schemes, as scheme operators would be expected to deal with applications for a permit on a non-discriminatory basis. That will apply both in terms of permit authorities treating applications from different utility activity promoters on an equal footing with each other, and equally with their own highway activities. It is possible that some businesses may incur greater costs in setting up new systems to improve the management of their activities. However, it is unlikely that such costs will be sufficient to have implications for competition.

Consultation

100. The policy and detailed changes have been developed in association with the Highway Authorities and Utility Committee (HAUC UK). HAUC UK is a body that assists the Welsh Ministers in arriving at proposals for new street works legislation. It is made up of representatives from local highway authorities (including Wales) and the National Joint Utility Group, which represents undertakers that are utility companies.

101. The proposals have been subject to two rounds of consultation in England and Wales. The first took place in February 2005 and was completed in April 2005. Some 500 bodies were invited to comment, including all highway authorities, statutory undertakers, representative groups for local authorities, undertakers, and groups representing different road users, construction firms, consultants, and software development houses. A list of those Transport Wales consulted is at Annex E. There were some 240 responses, which included 120 English authorities, 11 Welsh authorities, and 5 groups representing authorities, along with responses from 46 utility companies, 7 utility groups and 2 regulators. Other responses were received from 8 fire and rescue services, 2 software developers and six Government Departments. A summary of these responses can be found at <http://www.dft.gov.uk/consultations/archive/2005/tma/trafficmanagementactparts34a2005>

102. In response to the consultation the following changes were made:

- the number of works categories was simplified with 'programmed' works merged with 'major' with a 3-month notice period, instead of the, then, proposed six months;
- the notice periods for works were also simplified with the removal of different notice periods according to the road category;
- the concept of 'incursion' for works that encroach into the carriageway was dropped as part of the definition of works it was considered confusing. Works would be defined by their duration, with the exemption of immediate works;

- the periods of restrictions following major street works or highway works were set with the exception of immediate works and customer connections;
- the time period, within which fixed penalty notices can be paid have been extended to 29 days for discounted and 36 days for payment in full.

103. A Permits Working Group, with members appointed by HAUC, met to consider further policy changes and the outcome was the subject of a second consultation in November 2006 in England and Wales for twelve weeks. About 550 organisations, including all who had responded to the consultation in 2005, along with other similar bodies, were invited to comment. There were 167 responses from 84 English highway authorities, 7 Welsh highway authorities and 17 representative bodies, along with 24 statutory undertakers and 12 representative bodies. There were a small number of responses from software developers, fire services and regulators. A summary of the consultation responses can be found at: <http://www.dft.gov.uk/consultations/closed/keepingtraffickingmovingfollowup1736/trafmanregconsulrep>

104. At Annex F is a table briefly summarising the responses, the analysis and explanation of action taken where necessary. It takes account of the responses from Welsh consultees. In some cases, responses did not correspond directly with the questions posed, but took a more thematic approach. In these instances, comments have been included under the most appropriate headings.

Enforcement, sanctions and monitoring

105. The Regulations provide Authorities with a number of sanctions which they may use to achieve compliance with permit schemes.

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

107. Regulation 18(3) builds on these notices, and provides that where an undertaker has not taken the remedial action within the time frame, the Authority may take such steps as it considers appropriate having regard to the original non-compliance, at the cost of the undertaker.

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

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

110. The Welsh Assembly Government is committed to review permit schemes after a year of operation of the first scheme to provide evidence that permit schemes are

delivering the expected benefits. To this end DfT has let a contract to carry out and review parts of the TMA including the operation of permit schemes. The review will evaluate the performance of permit schemes against:

- the current baseline;
- highway authorities not operating permit schemes;
- how schemes operated over different roads compare in delivering benefits i.e. highway authorities' operating schemes on certain categories of roads (e.g. traffic sensitive), compared to those operating over all roads;

In particular the review will have regard to the appropriateness of permit fees set. The Welsh Assembly Government will share the report on the review with DfT.

Post Implementation Review

111. The Assembly Government has undertaken periodic reviews of all the codes of practice under the NRSWA and their accompanying regulations. DfT have now set up a contract to monitor the operation of the new regime under the TMA, and in particular these Regulations and the accompanying Statutory Guidance and Code of Practice, within 1 year of the first schemes coming into force. Work is underway to establish the baseline data and the results of this monitoring will be shared with the Assembly Government.

Summary

112. The Assembly Government is committed to reducing congestion across the road network, and to realise the economic, social and environmental benefits that this brings.

113. The proposed Permit Regulations will establish a framework for a highway authority to set up and operate permits schemes, should they choose to do so, that will encompass the management and co-ordination of both utility street works and their own.

114. When applying to the Welsh Ministers to operate a permit scheme, an authority must provide evidence to justify them operating a scheme. In so doing they must quantify the benefits (social, economic and environmental) that they expect to be realised and demonstrate how they will achieve parity in operating the scheme between their own activities and those of utilities.

115. When considering applications, the Assembly Government will aim to ensure that authorities set permit fees at a level that does not exceed the prescribed costs ie the costs of operating the permit scheme in relation to undertakers only.

116. All costs used in this RIA are indicative. We consider the social, economic and environment benefits that permit schemes will bring outweigh the potential costs. DfT has in place an evaluation contract to monitor the performance of permits schemes. This will provide evidence for the benefits delivered against current baselines and comparisons with highway authorities operating under the noticing regime.

117. It is recommended that legislative backing be given to the operation of permits schemes.

| Table 5 - Summary of costs and benefits | | |
|--|---|---|
| Option | Total benefit a year | Total costs a year |
| a. Do nothing | nil | nil |
| b. Permit Scheme | £38.7m (if schemes operated over 30% of roads) (£3.87m in Wales) | £36.3m operated over 30% of roads) (£3.63m in Wales) |

Pemits Working Group (PWG) membership

Representatives from the following organisations attend the PWG:

Department for Transport

EDF Energy

Openreach

Suffolk County Council

SP Power Systems

Derbyshire County Council

Transport for London

Verizon Business

National Grid

Thames Water

Transport Wales

National Street Works Highways Group

National Joint Utilities Group

Highway Agency

Blaenau Gwent CBC

Summary of Costs

The following table considers indicative costs that may be incurred by Utilities in the operation of permit schemes.

| Summary of costs for utilities (Figures for Wales in brackets) | | | |
|---|-------------------------------------|-------------------------------|-------------------------------|
| | Across All Sectors (DfT Assumption) | | |
| % of activities requiring Permit (based on Halcrows figure of 1.2M per year) (120,000) | 1% | 10% | 30% |
| Number of Permits Issued | 12,000 (1.2k) | 120,000 (12k) | 360,000 (36k) |
| *Cost for processing invoices | £240k (24k) | £2,400k (240k) | £7,200k (720k) |
| **Permit handling costs | £240k (24k) | £2,400k (£240k) | £7,200k (720k) |
| Permit Fees | £729k (£72.9k) | £7,290k (£729k) | £21,870k (£2.187k) |
| Total costs | £1,209k (£120.9k) | £12,090k (£1,209k) | £36,270k (£3,627k) |
| Benefit delivered (based on Halcrow figures) | | | |
| 1% reduction in congestion due to permits | £43k (£4.3k) | £4,300k (£430k) | £12,900k (£1,290k) |
| 2% reduction in congestion due to permits | £860k (£86k) | £8,600k (£860k) | £25,800k (£2,580k) |
| 3% reduction in congestion due to permits | £1,290k (£129k) | £12,900k (1,290k) | £38,700k (£3,870k) |
| 5% reduction in congestion due to permits | £2,150k (£215k) | £21,500k (£2,150k) | £64,500k (£6,450k) |
| 10% reduction in congestion due to permits | £4,300k (£430k) | £43,000k (£4,300k) | £129,000k (£12,900k) |
| * NJUG, in their consultation response, suggested that it will cost a utility £40 to process each invoice it receives from an authority operating a permit scheme. On this basis we have assumed as worst case scenario that each invoice received will relate to the granting of 2 permits. It is expected that a permit authority will invoice a utility on a monthly basis, but most likely to invoice quarterly, giving the opportunity to further reduce costs. This is an issue for the individual permit authorities to define in their schemes. | | | |
| **NJUG have suggested that there will be a handling cost incurred by them of £20 for each permit | | | |
| The assumed main costs for system upgrade were included in the RIA for The Street Works (Registers, Notices, Directions and Designations) (No 2) (Wales) Regulations | | | |

2008. Additional costs for Permits considered to be negligible.

It is reasonable to assume that highway authorities will incur additional costs for applying Permits to their own works. However, as we have not included associated benefits for the highway authorities we have not included these costs.

The FPN charge for breaching a condition of a permit is the same as for the Notices regime. The RIA for The Street Works (Fixed Penalty Notice) (Wales) Regulations 2008 provides the rationale and costings for FPNs. We have not included this here as it is assumed that the number of FPNs for notice condition errors directly equates to that for permit conditions breaches. As notices take account of the whole of works it would be double counting.

With the greater co-ordination required for both the Permits and Noticing regimes there is expected to be a need for more extensive site surveys prior to applications. This has not been costed in this RIA as it has been included in the RIA for The Street Works (Registers, Notices, Directions and Designations) (No 2) (Wales) Regulations 2008 for all expected works so it would therefore be double counting.

Annex C

Rationale used in calculating permit fees:

- C-1. The fee levels set out in the Permit Regulations were drawn up following an analysis carried out of information provided by a range of local authorities and after discussion at PWG and at a workshop held with local authority and utility representatives. We believe these figures come from a reasonably representative range of authorities across England.
- C-2. The process of compiling figures was "bottom up".
- C-3. Three levels of highway authority staff were identified in the issuing of permits Street Works Officers, Street Work Co-coordinators and Traffic Managers.
- C-4. From the information, a 'median matrix' was produced to provide an average (median) time for each task associated with issuing a permit. This involved:
- estimating the input required for each of the three levels of staff, for each task in the process of dealing with a permit, across each category of activity;
 - estimating the proportion of each task to discount, across each category of activity, because it was already being carried out under the existing co-ordination duty under the NRSWA;
 - applying costs for staff;
 - allowing for overheads associated with operating the permit system.
- C-5. The method of calculating the fees involved combining the results of many calculations, each involving several components, each of those with various assumptions. There is therefore, inevitably, some uncertainty in the outcome but the process does:
- build on the experience of authorities working in this area;
 - allow the fee levels to reflect the work involved for different categories of activities; and,
 - by using the median based figures (as described above) to set the maximum fee levels, the risk of the initial fees being higher than they need to be is diminished.
- The maximum fees are set currently as national figures.
- C-6. It has to be recognised that the permit scheme is a new concept for which there is no benchmark. Once schemes are operating, and as they are monitored, more information will be gained on levels of fees that will allow the proper proportion of authorities' costs to be covered, and no more. At that stage the basis of assessment is likely to be on the totality of costs and fees and not on their individual components.
- C-7. These Regulations set the maximum fees near to the figures calculated as outlined above for each category from the median data from the group of authorities. The figures were mostly rounded to the nearest £5 to produce the fee levels shown in the table. Using the median data to provide a maximum will allow the authorities with lower costs to go ahead (subject to meeting any other requirements and gaining the approval of the Welsh Ministers) and should encourage authorities to develop efficiently operated schemes.

Individual authorities will still have to demonstrate their cost basis when applying to run a scheme.

- C-8. The overall cost to activity promoters of fees is based not just on the fees themselves but on the number of activities in each category. The predominance of activities that are minor works and those carried out on the non traffic sensitive category 3 and 4 roads, therefore has considerable influence on the total.

Annex D

Potential overall costs imposed on utility activity promoters by permit fees

(Equivalent figures for Wales would be approximately one tenth of the figures shown in the following table, based on there being 120,000 works per annum in Wales)

| Activity type | Total number of street works (2003-4) | | | Fees proposed (£) | | | | % of all street works require permits (£k) *c | | |
|---|---------------------------------------|---|--|-------------------|-------------------|--|--|---|--------------|---------------|
| | Total | 17% of total street works that are attributable to road category 0- 2 and TS *a | 83% of total street works that are attributable to road category 3-4 non TSve *b | Road Category 0-2 | Road Category 3-4 | Total fees for all road category 0-2(£k) | Total fees for all road category 3-4(£k) | 1% | 10% | 30% |
| Major** | 1,911 | 3,249 | 15,862 | 345 | 225 | 1,121 | 3,569 | 47 | 469 | 1,407 |
| Standard | 282,299 | 47,991 | 234,308 | 130 | 75 | 6,239 | 17,573 | 238 | 2,381 | 7,144 |
| Minor | 514,769 | 87,511 | 427,258 | 65 | 45 | 5,688 | 19,227 | 249 | 2,491 | 7,474 |
| Immediate | 383,820 | 65,249 | 318,571 | 60 | 40 | 3,915 | 12,743 | 167 | 1,666 | 4,997 |
| Total | 1,200,000 | 204,000 | 996,000 | | | 16,963 | 53,112 | 701 | 7,007 | 21,022 |
| <p>The above figures do not take into account possible variation fees. Assume that 20% of major activities require a variation , 10% of standard activities and 5% of minor and immediate activities (where there is little opportunity to change in very short duration activities). With £40 variation fee on cat 0-2 roads and £35 on cat 3 and 4 roads, then the additional costs for variations would be:</p> | | | | | | | | 28 | 283 | 848 |
| Total including variations | | | | | | | | 729 | 7,290 | 21,870 |
| costs attributable to road category 0-2 and traffic sensitive | | | | | | | | 125 | 1,250 | 3,750 |
| costs attributable to road category 3 and 4 non traffic sensitive | | | | | | | | 604 | 6,040 | 18,119 |
| <p>*a: 17% based on average weighted split (weighted by number of street works) *b: 83% based on average weighted split (weighted by number of street works) *c :Some permitting authorities will not include all their roads on a permit scheme **: Fees for major activities include cost of Provisional Advance Authorization NB all costs are rounded to nearest thousand (k)</p> | | | | | | | | | | |

**THE TRAFFIC MANAGEMENT PERMIT SCHEME (WALES) REGULATIONS 2008
- CONSULTATION LIST**

186K Ltd
360 Atlantic (UK) Ltd
51° Limited
Advanced Radio Telecom Ltd
Advantica Technologies Limited
Aermatis Ltd
Age Concern Cymru
Albion Water Ltd
Alpha Telecoms Ltds
Aquila Network Services Ltd.
Arboricultural Association
ARC Recycled Materials
Associated British Ports
Association for Geographic Information
Association for Road Traffic Safety and Management
Association of Chief Police Officers
Association of Consulting Engineers
AT&T Global Networks Services (UK) B.V.
Atlas Internet (UK) Limited
Automobile Association
AXS Telecom (UK) Ltd
Barrie Highfield & Associates
BDS Rights of Way and Access Committee
Belgacom UK Limited
Belle Group
Blick Software Systems Ltd
Brecon Beacons National Park Authority
Briggs Oil Ltd
British Airport Authority
British Association of Conference Destinations
British Construction Equipment Association
British Cycling Federation
British Motor Cyclists' Federation
British Ports Association
British Retail Consortium
British Waterways
Broadband Optical Access UK Ltd
Broadnet UK Limited
BSI ACCESS UK Limited
BT
BT Regulatory Affairs
Cable & Wireless Business HKT Pacific (UK) Ltd
Cable & Wireless Communications
Call-Net (UK) Limited
Campaign for the Protection of Rural Wales (CPRW)

Caravan Club
Chartered Institute of Building
Chartered Institute of Logistics and Transport
Chartered Institute of Transport
Chief Executives, Chief Legal Officers and Chief Technical Officers of County
Signal Global Communications UK Ltd
Civic Trust
Civil Engineering Contractors Association (CECA)
Colas Limited
COLT
Communicorp (UK) Ltd
CompleTel UK Limited
Concert Communications Ltd
Confederation of British Industry (Wales)
Confederation of Passenger Transport UK
Connect Utilities Ltd
Consignia
Construction Confederation
Construction Industry Training Board
Core Telecommunications Limited
Councils in Wales
Countryside Council for Wales
Cyclists Public Affairs Group
Cyclists' Touring Club
Data Marine Systems Limited
Dee Valley Water Plc
Devon IT Services
DirectNet Telecommunications UK Limited
Disability Wales
Disabled Persons Transport Advisory Committee
Dolphin Telecom Ltd
Drive Memory Ltd
Dwr Cymru Welsh Water
Dynergy UK Communications Ltd
Dyson Bell Martin
Easynet Group plc
Easynet Telecommunications Limited
Econet Satellite Services Limited
Eircom (UK) Limited
Electrical Contractors Association
Energis Carrier Services Ltd
Energis Communications Limited
Engenica
Enterprise PLC
Environment Agency
Environmental Services Association
Esat Telecommunications (UK) Limited
Esprit Telecom UK Limited
Eurobell
Eurocall Limited

EXOR
Farland Services UK Limited
Faultbasic Ltd
Federation of Master Builders
Federation of the Electronics Industry
Fibrenet (UK) Limited
FirstMark Carrier Services (UK) Ltd
Flag Atlantic UK Ltd
Flute Limited
Forestry Commission
Formus Communications UK Ltd
France Telecom Network Services – UK Ltd
Freight Transport Association
Friends of the Earth Cymru
Gamma Telecommunications Ltd
Gas Consumer Council for Wales
General Telecommunications Ltd
Global Crossing (UK) Telecommunications Ltd
Global One Communications Holdings Ltd
Ground Zereau Limited
GT UK Limited
GTS Business Services (UK) Ltd
GX Networks PLC
Help the Aged Cymru
Heritage Railways Association
Highway Authorities and Utilities Committee
House Builders Federation
Hutchison 3G UK Ltd
IBSC Limited
ICO Services Ltd
IDT Global Limited
IGTL Solutions (UK) Limited
Global Telesystems Europe BV
Inclarity PLC
Inquam BT3G Ltd
Institute of Highways Incorporated Engineers
Institute of Logistics and Transport
Institute of Public Rights of Way Officers
Institute of Road Safety Officers
Institution of Civil Engineering Surveyors
Institution of Civil Engineers
Institution of Electrical Engineers
Institution of Gas Engineers & Managers
Institution of Highways and Transportation
Institution of Lighting Engineers
Institution of Quality Assurance
Institution of Water & Environmental Management
Interac
International Society of Arboriculture (Europe) Ltd
International Telecom Plc

International Telecommunications Group Inc
Internet Central Ltd
INTERNET Network Services Limited
Interoute
Interoute Networks Ltd
Ipsaris Limited
ISA UK/1
iXnet UK Limited
Izenkom Limited
Jason Consultants Ltd
Jersey Telecoms
Joint Committee on Mobility for Disabled People
Joint Committee on Mobility of Blind and Partially Sighted People
Kingston Communications (Hull) PLC
KPNQWEST Assets UK Limited
LambdaNet Communications (UK) Ltd
Land Access and Recreation Association
LDI Communications Ltd
Liberty Broadband Limited
Light Rail Transit Association
Lighting Industry Federation Ltd
Living Streets
Louis Dreyfus Communications SA
Lux Traffic Controls Ltd
M3COM(UK) Ltd
Magnox Electric
Manet Telecom
Mayrise Ltd
Meg@UK Limited
Mid and West Wales Fire Brigade
Mid Wales Partnership
Moleseye Limited
Motorists' Forum
National Association of Tree Officers
National Association of Waste Disposal Contractors
National Federation of Demolition Contractors
National Grid
National Power Plc
National Sewerage Association
National Society for Clean Air and Environmental Protection
National Transcommunications Ltd
Neosnetworks Ltd
Net.Net Limited
Netkonect Communications plc
Networkrail
Nevada Telecom Ltd
NJUG Ltd
North Wales Fire Service
Norweb Telecom Ltd
NRSWA Ltd

NRSWA WALES
NTL
NTT Europe Limited
NYNAS UK AB
O2 (UK) Ltd
Office of Communications
Office of Gas and Electricity Marketing
Office of Water Services
Orange 3G Ltd
Ordnance Survey
Pacific Gateway Exchange (UK) Ltd
Pangea Global Communications Inc
Pembrokeshire Coast National Park Authority
Pensioners' Voice
Pipeline Industries Guild
PLDT (UK) Ltd
Powergen
PrimeTec (UK) Limited
Primus Telecommunications Limited
PSINetworks UK Limited
Quadrant
Quarry Products Association
RAC Foundation for Motoring
RadioTel Systems Ltd
Ramblers Association
Reach Europe Ltd
Redstone Communications Ltd
Refined Bitumen Association Ltd
Retro-reflective Equipment Manufacturers Association
Rights of Way Review Committee
Road Haulage Association
Road Safety Markings Association
Road Surface Dressing Association
Rocom Network Services Limited
RoSPA
Royal Association for Disability and Rehabilitation
Royal Society for Nature Conservation
Royal Town Planning Institute
Sand & Ballast Hauliers and Allied Trades Alliance Ltd
ScottishPower PLC
Severn Trent Water
SingTel (Europe) Limited
Society of British Gas Industries
Society of British Water and Waste Water Industries
Society of Parliamentary Agents
Sonic Telecommunications International Limited
South Bank Systems PLC
South Wales Fire Service
South Western Electricity Plc
Southern Electric Plc

Spacotel International Ltd
Sprintlink UK Limited
SSE Telecommunications Ltd
Star Europe Ltd
Stentor Communications Limited
Storm Telecommunications Limited
Streetworks Consultancy Management Group
Surf Telecoms Ltd
SUSTRANS Cymru
Swisscom (UK) Limited
Symology Ltd
Syntegra
Technical Advisors Group
Telecom One Limited
Telecom Securior Cellular Radio
Teleglobe International
Telegroup UK Ltd
Telemonde Networks Ltd
Teleport London International Ltd
Teleport UK Limited
Telewest Ltd
TeliaSonera International Carrier UK Ltd.
Telia UK Ltd
Telstra (UK) Ltd
THUS GROUP plc
Thus PLC
TI United Kingdom Ltd
Tiscali UK Limited
TMI Telemedia International Limited
T-Mobile
TNS-Transline Ltd
Torch Communications Limited
TotalTel International Inc
Traffic Control Systems Unit
Transco
Transport 2000
Transport Reform Alliance
Tree Advice Trust
Trunk Road Agents in Wales
T-Systems Limited
Tweedwind Limited
Tyco Networks (UK) Limited
TyCom Networks (UK) Limited
UK Highways A55 Ltd
UK Operators Group
Unisource Carrier Services (UK) Limited
United Kingdom Society for Trenchless Technology
United Networks Limited
Universal Access UK Limited
Urband Limited

Utilities Contractor Associations' Federation
Ventelo (UK) Ltd
Verizon Global Solutions U.K.Ltd
Versatel Telecom BV
VIA NET.WORKS UK Holding Ltd
Viatel Global Communications Ltd
Vodafone Group Plc
Vtesse Networks Ltd
VTL (UK) Ltd
Wales Council for the Blind
Wales Council for the Deaf
Wales Disabled Drivers
Wales TUC Cymru
Water UK
Water Voice
Welsh Association of Technical Officers
Welsh Consumer Council
Welsh Cycling Union
Welsh Joint Utilities Group
Welsh Local Government Association
Western Power
Winstar Communications Limited
Witley Communications Limited
World Access Telecommunications Group Limited
World Online UK Ltd
WorldcomWorldxChange Communications Ltd
WPE Systems
Yorkshire Water Services Ltd
Your Communications

| Consultation Questions | Responses | Comments/Action taken |
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| <p>1. (a) Do you agree with the requirements placed on highway authorities in the Regulations? If you answered no, what should the requirements be?</p> <p>(b) Do you think that the Statutory Guidance we have produced for local authorities is clear and comprehensive? If you answered no, how could we improve it?</p> <p>(c) Do you find Chapter 7 of the Code of Practice a useful overall guide?</p> | <p>In response to all parts of the question -</p> <p>Local authorities on the whole were content with the documentation. Although some respondents suggested minor drafting changes to improve the consistency between the different documents.</p> | <p>The respondents' comments were noted and the documentation has been amended in light of some of the responses. Amended.</p> |
| <p>2. (a) Do you think that the approach in the preceding paragraph should be adopted for gas leaks (or similar emergencies which require searching for a source) - i.e. exempt from requiring a permit variation if all four conditions are satisfied, and with an alternative method of notifying the Permit Authority of the amended or additional locations?</p> <p>(b) Or should the principle be accepted but with different conditions?</p> <p>(c) Alternatively, do you think there should be a requirement for a permit to be obtained for each new excavation, as in the Code of Practice, but without a fee being charged? We welcome any views you may have.</p> | <p>In response to all parts of the question -</p> <p>All respondents felt that this was over complicated.</p> <p>Local authorities felt that each new excavation should be treated as a variation with no fees attached if it was within 20m of the original location and it could be proved that the new excavation related to the original.</p> | <p>An alternative solution was proposed and agreement was sought and given from the PWG. The amended proposal is that a permit is required for the initial excavation, but that any exploratory work within 50m of the original work will not require a permit, only notification to the highway authority.</p> <p>The Code of Practice (CoP) has been amended to reflect the change in excavation requirements.</p> |
| <p>3. Do you agree with the changed approach to immediate activities? (Retrospective)</p> | <p>Many of the responses from highway authorities stated that in these circumstances notification by phone would suffice. Many of the utilities were opposed to the principle of permits for immediate works.</p> | <p>The requirement of having permits for immediate works had previously been discussed prior to consultation and the PWG agreed with the proposals detailed in the consultation document.</p> <p>Transport Wales considers that enabling work to take place initially without a permit, but bringing the activity under the permit system is a fair balance. It enables the work to be</p> |

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| | | <p>regularised under the permit system enabling the authority to apply, where appropriate, conditions to the work being carried out without the ambiguity of retrospective permits.</p> <p>Therefore, Transport Wales is not proposing any changes to its proposals on immediate activities.</p> |
| <p>4. Provisional Advance Authorization (PAA) - Do you have any comments on what is now proposed?</p> | <p>Most respondents recognize that although different terminology has been used the underlying principle remains the same. However, utilities want PAAs to cover multiple permits as opposed to only covering one permit.</p> | <p>The Department for Transport has held extensive discussions about PAAs covering multiple permits with stakeholders.</p> <p>However, in order that activities can be proactively managed and coordinated, PAAs could not cover multiple permits. The work a highway authority has to carry out in regard to a PAA is little different from that of a normal permit. Therefore it is reasonable that a PAA covers only one permit.</p> <p>Transport Wales is not proposing any changes to its proposals on PAAs covering more than one permit.</p> |
| <p>5. Do highway authorities anticipate any difficulty in operating a permit register alongside any street works register that may be needed? If yes, please state your reasons and suggest how we can achieve accurate information being placed on these registers.</p> | <p>The majority of respondents did not consider this to be problematic. Most stated that the issue would be whether the technical (ICT system) specification could accommodate this.</p> | <p>Transport Wales confirms the technical specification can cover these circumstances.</p> <p>Therefore, Transport Wales is not proposing any changes to its proposals in this area.</p> |
| <p>6. What are your views on the fee levels and fee structure?</p> | <p>There was no consensus in the responses received to this question. Many of the Utilities stated the proposed fees were too high, and they reflected high Local Authority costs. Local authorities are concerned the maximum fee limit is too low and they will not be able to cover their costs. A large number of highway authorities thought that there should be one standard fee across all authorities.</p> | <p>The Department for Transport has worked on deriving robust data for the maximum fee limit. The figures were obtained from a cross section of highway authorities and medians were taken. Discussions were held with all the Working groups prior to consultation to seek views on fee limits. Each local authority will have to justify the fee that they propose to charge and utilities will have this information as part of the consultation that local authorities will have to undertake. In addition, robust data will have to be provided to Transport Wales by the relevant highway</p> |

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| | | <p>authority before approval of a permit scheme</p> <p>Therefore, Transport Wales does not propose any changes to its proposals on fee levels.</p> |
| <p>7. Do you agree with this approach to discounts? If not please could you state your reasons and provide alternative suggestions.</p> <p>8. (a) Do you agree with this approach? (50% discount)</p> <p>(b) Regulation 31(4) only deals with circumstances where all of the applications are made by utility companies. If, when associated permit applications were submitted together, some of the applications were for works on behalf of the highway authority, should similar discounts be available for the utility companies' applications, bearing in mind that highway authorities do not pay permit fees? If so, are there any circumstances where the discounts should not apply?</p> | <p>In response to all parts of the question -</p> <p>Most local authorities consider that discounts should be at their discretion and not mandatory. Local authority respondents felt that they should not be obliged to give automatic discounts to second applications; they maintain that they still have to carry out the relevant coordination duties etc. Also they queried whether the technical specification would be able to do this automatically. However they do recognize that ability to give discounts may encourage the correct behavior from Utilities and, in turn, would in time reduce the impact of works on the road network.</p> <p>Utilities think that discounts should be a matter of course and that a 50% discount to the second promoter involved in the work, but with no discount to the initial promoter, is best practice. This would lead to a situation where no promoter will want to initially propose a scheme; hence discounts should apply equally to all utilities carrying out the works. Utilities state that the authorities should be treated like another utility therefore their fees should be reduced accordingly.</p> | <p>Transport Wales recognises the current proposals would penalise the initial Statutory Undertaker in joint work. Therefore, when more than one Statutory Undertakers work together they will all receive a discount for each permit application, provided all applications are submitted together, as well as where work is undertaken with a Local Authority.</p> <p>Transport Wales also recognizes the eligibility of undertakers for fee discount if joint working is being done with the highway authorities</p> <p>Transport Wales understands that highway authorities will still have costs related to these permits. As Transport Wales is committed to permit fees covering the cost of their administration in relation to utilities' works, it proposes to reduce the level of automatic discount from 50 per cent for the second and later applications to 30 per cent for all applications. This will lead to similar overall fees for the most common situations, where 2 or 3 applications are made together, without the perverse effects of the original proposals. It should be noted that highway authorities are still able to have larger discounts in their scheme if they so wish.</p> <p>Action: changed the minimum discount to 30% of the permit fee and apply this equally to all applications (if they fit the criteria).</p> |
| <p>9. Do consultees consider that, in the absence of a criminal offence of failing to apply appropriately for a permit (as envisaged in the earlier consultation), the sanction of refusing a permit (combined with</p> | <p>In response to all parts of the question -</p> <p>All those who responded to this question agreed that this option should be available, as most</p> | <p>Notices FPNs are all level 4 offences, while those for Permits may be up to level 5 offences.</p> <p>However Transport Wales understands the concerns raised</p> |

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| <p>the offence of working without a permit for those who continue with works regardless – and the risk of prosecution or a Fixed Penalty Notice (FPN) for that offence) will be effective? What are your views on this?</p> <p>10. Do you consider that it would be appropriate to provide the option of dealing with these offences by means of FPNs? Are there any disadvantages?</p> <p>11. Do you agree with the proposed fine and penalty levels?</p> <p>12. Do you agree with the proposal that Permit Authorities should be able to withdraw a FPN and take the offender to court instead, where they consider it appropriate?</p> | <p>believed that the courts are an effective deterrent.</p> <p>There was not a consensus of views between the utilities and highway authorities on the level of fines proposed. Utilities believed that breaking a permit should carry the same penalty as breaching Noticing regulations, as they believed there was a high degree of similarity between the two offences</p> <p>Local authorities stated that FPNs should be higher than a permit fee; otherwise most utilities will take the risk of not applying for a permit and being caught.</p> <p>Of those who responded, the great majority felt that that Permit Authorities should not be able to withdraw a FPN once paid and take the offender to court.</p> | <p>in the consultation. Therefore Transport Wales has amended the Regulations so there are now two different levels of offences. Working without a permit is still a level 5 offence, however breaching a permit has been reduced to a level 4 offence.</p> <p>The amount of Fixed Penalty fee applicable to each offence is now as follows: -</p> <ul style="list-style-type: none"> • Working without a permit (level 5 offence) subject to £500, discounted to £300 if paid within 29 days. • Breaching a permit condition (level 4 offence) subject to £120, discounted to £80 if paid within 29 days. <p>Also the Regulations have been amended to reflect that once a FPN is paid the liability is discharged and therefore a highway authority no longer has the option of withdrawing the FPN and instigating court action.</p> |
| <p>13. Do you agree with the way that the draft Regulations would disapply or modify sections of the NRSWA for streets operating a permit scheme? If not please state your reasons.</p> | <p>Of those who responded, most agreed with the modifications and disapplication. However, all respondents stated that the s74 changes needed more thought and clarification.</p> | <p>The concerns about the changes to s74 were noted. and a further consultation on s74 has been undertaken. The CoP has been amended to reflect the separation of s74 from these Regulations.</p> |
| <p>14. There may be circumstances when a permit (or the attached conditions), which has been previously issued by the Permit Authority, needs to be changed. If the consequent disruption cannot be mitigated in a better way, it may be necessary to vary the permit for the activity e.g. by changing the time or manner of working. As set out in Regulation 31(2), it is proposed that where the authority initiates the permit variation, no fee will be payable by the promoter.</p> <p>Do you agree? If not please state your reasons and provide alternative suggestions.</p> | <p>Concerns were raised by the respondents regarding the legal implications if a permit was agreed but work could not be carried out. Local Authorities were concerned that promoters would be able to sue the authority for their incurred costs.</p> <p>Utilities stated "that subject to test of reasonableness" they accept there may be occasions when, in extremis, the need to suspend works may be necessary due to unforeseen circumstances. But a further permit to carry out these works should not attract a fee. Where an authority consistently changes conditions that could have been foreseen, utilities should be allowed to claim and be paid compensation by the authority.</p> | <p>Transport Wales has amended the Regulations to reflect that no fee is payable if a new permit is required as a result of a Permit authority revoking a permit on its own initiative.</p> <p>Transport Wales believes issues arising from when a permit is cancelled is a matter for the highway authority and the Statutory Undertaker concerned, and not Transport Wales as it is highly dependent on the individual circumstances. Therefore Transport Wales does not feel it appropriate to provide guidance on this issue.</p> |
| <p>15. Starting dates- duration for category 0, 1 & 2. Do you agree with this proposed mechanism? If</p> | <p>In general local authorities supported this approach and would like to see it replicated for all</p> | <p>The Permit regime is meant to be proactive and it should enable a highway authority to better</p> |

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| <p>not please state the reasons why.</p> | <p>categories of roads. However there were a minority that suggested a more flexible start date i.e. 24 hours with no flexibility with regard to the end date as it would cause network management difficulties.</p> <p>Utilities were not in agreement with the structured approach proposed. They all favored a flexible solution and suggested having a variation window of 24 hours for starting and finishing.</p> | <p>manage its network. Therefore the rigidity in starting dates and end dates will need to remain as work on these types of roads can cause major disruption for road users.</p> <p>Therefore, Transport Wales is not proposing any changes to its proposals in this area.</p> |
| <p>16. Flexible window for category 3 & 4. Do you agree with this proposed mechanism? If not please state your reasons why.</p> | <p>Highway authorities were strongly opposed to this proposal. They considered it would seriously impact on their ability to carry out effective coordination of work, which in turn would affect their ability to carry out Network Management duties. They stressed that their duty related to all roads and not just category 0-2 roads. While they think a flexible start date may be acceptable they do not consider the end date should be moved without a variation. The highway authorities also questioned how they would police the s74 and inspection regime.</p> <p>Utilities favored the suggested approach as it would provide them with a degree of flexibility.</p> | <p>Transport Wales understands this degree of flexibility causes concerns for highway authorities and their network management responsibility. However, this has to be balanced against allowing some flexibility for Statutory Undertakers in areas where it will have a lower effect (in non-sensitive category 3-4 roads). The position of traffic sensitive roads has been clarified in the Statutory Guidance and Code of Practice, so it is clear that if a road is deemed a traffic sensitive road at certain times then it should always be counted as traffic sensitive for the purposes of a permit system. Therefore, Transport Wales is not proposing to change its provisions in this area.</p> |
| <p>17. Permits relate to one street - per Unique Street Reference Number. Do you consider this a sensible approach? If not please let us know of your views.</p> | <p>Of those who responded most agreed with this approach however it was stated the definition of "phase" needed to be clarified. Some respondents considered that this proposal would encourage first time reinstatement.</p> | <p>The definition of "phase" has been clarified in the CoP, and we now believe the meaning will be clear to all parties.</p> |
| <p>18. Do you consider that the Key Performance Indicators (KPI) indicated in chapter 20 of the CoP are appropriate for Permits? If not, can you suggest alternative KPI measurements?</p> | <p>Many of the responses stated that the proposed KPIs would not enable the measurement of parity of treatment between local authority led works and Utility led works.</p> | <p>The section on KPIs in the CoP has been amended and there are now 7 KPIs. Highway authorities must incorporate at least 4 KPIs in their scheme, including KPI one and two from the list. This will further strengthen the KPI system so that the performance of highway authorities in applying a consistent approach to both their own work and that of Statutory Undertakers can be demonstrated.</p> <p>The revised set of KPIs was taken to the working group and all agreed with the proposal. The</p> |

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| | | CoP has been modified to take account of these changes. |
| <p>19. Do you consider that it would be appropriate for disputes in relation to certain aspects of permit schemes to be dealt with through alternative dispute resolution (ADR) rather than through the courts?</p> <p>If so, please indicate</p> <ul style="list-style-type: none"> - what aspects of permit schemes should be covered; and - which form of alternative dispute resolution should be used (i.e. arbitration or another form of ADR?) | <p>Of those who responded most were content with current arrangements as described in the CoP however clarification was sought on the arbitration system. Most Utilities wanted a clearly defined arbitration process with escalation to the Department for Transport or Transport Wales, as appropriate, and to have the Secretary of State for Transport (the Welsh Ministers in Wales) to be the final arbitrator. The utilities wanted s37 (4) of the TMA to be enacted to facilitate this.</p> | <p>The relevant sections of the Statutory Guidance and CoP have been amended to include a more detailed framework for dispute resolution. However, Transport Wales believes it is local authority's duty to ensure their dispute resolution procedures are effective and, in cases where their dispute resolution system is unlikely to achieve a reasonable outcome, they have the option of taking formal legal action. Therefore Transport Wales does not think it appropriate to include either them or the Welsh Ministers as the final arbitrator in these matters.</p> |
| <p>20. Cancellation of permits- (no fee) Do you consider this a sensible approach? If not please let us know of your views.</p> | <p>There was broad agreement that this approach was sensible. Local authorities were content with this approach as long as they could retain the original fee. Utilities stated that any subsequent permit applications (whereby authorities had already done the coordination activities) should result in a discounted permit fee.</p> | <p>As there was broad agreement with this approach to cancellations, Transport Wales does not propose to change these measures. However, the CoP has been amended to reflect some of the minor concerns raised.</p> |
| <p>21. Do you have any comment on the analysis of the costs and benefits in the RIA? Please provide supporting evidence where possible.</p> | <p>Detailed comments were provided by Utilities who had concerns about assumptions made while highway authorities had some concerns related to their costs.</p> | <p>We have looked at the detailed comments and revised the RIA of which this is part.</p> |