

Partial Regulatory Impact Assessment for Permit Schemes

Contents

Title of Proposal	3
Purpose and intended effect	3
Objectives	3
Background.....	3
Rationale for Government intervention	5
Consultation.....	6
Within government	6
Public consultation.....	6
Options	6
Do Nothing.....	6
Permit Schemes.....	7
Permit Fees.....	8
Option 1: Standard Permit Fee Model	9
Option 2: Maximum Permit Fee Model.....	9
Types of Permit Schemes.....	9
Option 1: Non-standard Permit Schemes.....	9
Option 2: Standard Permit Scheme.....	9
Costs and Benefits	10
Sectors and groups affected	10
Race Equality Impact.....	11
Environmental impact.....	11
Disability Impact Assessment.....	11
Benefits	11
Economic benefits.....	11
Social and environmental benefits	14
Costs.....	14
Balance of costs and benefits	16
Small Firms Impact Test	18
Competition Assessment.....	18
Enforcement, sanctions and monitoring	18

Annex A: Permits Working Group (PWG) membership	20
Annex B: Proposed Key Performance Indicators	21
Annex C: Rationale used in calculating permit fees:	22

Title of Proposal

1. Draft regulations for Part 3 of the Traffic Management Act 2004: Permit Schemes (England) Regulations 200[7]

Purpose and intended effect

Objectives

2. 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 economic and environmental benefits.

Background

3. 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 activity promoters' with regard to co-ordination and the setting of conditions.
4. 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). The proposed Regulations would apply to England only, as the National Assembly for Wales has power to make regulations as regards Wales.
5. 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. 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. The works carried out by local authorities and utilities were not always registered or co-ordinated, which has had a major effect upon congestion and disruption of the highway.

¹ Activity in the context of permits refers to: street works as defined in s48(3) of the New Roads and Street Works Act 1991 (NRSWA); works for road purposes as defined by s86(2) of NRSWA; other works that occupy the highway carried out by the authority in its capacity as a highway authority or traffic authority.

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

³ Under Part 3 of the Traffic Management Act 2004, 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 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.

Also, there are now some 200 utilities with a statutory right to dig up the road, significantly more than in 1991.

6. In addition, under the 1980 Act local highway authorities and the Highways Agency (on behalf of the Secretary of State) are responsible for the maintenance and improvement of their respective roads and accordingly carry out various activities on those roads.
7. 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.
8. 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 Secretary of State to make regulations to specify more detailed requirements. The relevant Regulations are the proposed *Traffic Management (Permit Schemes) (England) Regulations 200[7]*. Individual permit schemes will, however, be prepared by highway authorities (though they will not take effect until approved by the Secretary of State for Transport by Order).
9. Where permit schemes are brought into effect, they will effectively replace parts of 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 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.
10. The key differences between permit schemes and the existing powers for managing activities on the street under NRSWA are:
 - authorities will be in a position to be more proactive in the management 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 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.
11. Two types of bodies could be directly affected by the changes in the proposed regulations: (i) some 150 highway authorities (Transport for London, the Highways Agency, county councils, London boroughs, unitary authorities and Metropolitan Borough Councils) , and (ii) some 200 utilities who have the right to carry out activities in the street. The Highways Agency, an executive agency of the Department for Transport, will also be affected.

⁶ s16 TMA refers

⁷ Regulation 8(3) refers

12. 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) TMA allows for this) but must apply to the Secretary of State for Transport if they wish to do so.
13. The 200[7] Regulations and draft Statutory Guidance set out the procedure for highway authorities to apply to the Secretary of State 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, utility companies (from the gas, water, electricity and telecommunications sectors) and highway authorities. A list of the working group member organisations is at Annex A.

Rationale for Government intervention

14. Activities on the highway can limit the amount of road space available to traffic and so lead to congestion and disruption. It is often essential that such works are undertaken, and to that extent some disruption will be unavoidable. However, the Government considers that some of the effects could be minimised by ensuring activities:
 - do not take longer than necessary;
 - are planned and co-ordinated effectively with other activities (both within a highway authority's area and across boundaries with other highway authorities) to minimise potential inconvenience;
 - are carried out in a manner that causes least disruption; and
 - are properly publicised so that those likely to be affected by the activities have the opportunity to change their plans accordingly.
15. In order to co-ordinate effectively, highway authorities need information on the activities to be carried out: i.e. location and duration of activity, and how extensive they will be. Information needs to be accurate and provided to the highway authority early enough to allow them sufficient time to consider how disruptive the activities are likely to be and if and how that disruption could be reduced.
16. Highway authorities also need means by which they can exercise influence or have control over activities, e.g. when or how the work is carried out, in order to minimise their impact. The existing powers under NRSWA have not proved sufficiently effective in this regard as the requirement is only for utility promoters to notify the authority of their intention to carry out an activity rather than requiring the permission of the highway authority to carry out the work. Under permit schemes, all activity promoters will have to positively obtain a permit to carry out activities and comply with the conditions imposed by the permit authority.
17. In the case of emergency activities, it is recognised that a promoter will not be able to apply for a permit in advance. However the promoter will have to apply to the highway authority for a permit within 2 hours of commencing work.
18. The Government believes that in order to assist authorities in carrying out their network management duties, the existing range of powers which they have to control activities in the street needs to be revised, for example to allow conditions to be imposed on the way activities are carried out as well as the timing of activities to be influenced by authorities. These changes are facilitated by the technological advances over the last decade which allow for easier communication between organisations involved and the use of tools such as geographical information systems to highlight potential conflicts between activities or indicate the potential scale of impacts of activities. By enabling highway authorities to operate permit schemes, they can help those authorities to reduce the current levels of disruption to road users and local residents and businesses, which should lead to significant environmental and economic benefits.

Consultation

Within government

19. Consultation took place within Government, in particular with: (i) the Department of Trade and Industry, (ii) the Department for Environment, Food and Rural Affairs, (iii) the Department for Constitutional Affairs, (iv) the Home Office, (v) HM Treasury and (vi) Cabinet Office; (vii) the utility regulators OFGEM, OFWAT and OFCOM.

Public consultation

20. A full consultation exercise was carried out during Spring 2005 on a range of proposals under parts 3 and 4 of the TMA and some related powers in NRSWA. The proposals in the consultation paper were the result of deliberations from working groups consisting of representatives from highway authorities, utility companies and DfT.
21. Approximately 250 responses to the consultation were received and revealed wide ranging views on the concept of permit schemes and on the detailed proposals. The Permits Working Group (PWG) was reconvened to further consider proposals for the operation of permit schemes.
22. The Department of Trade and Industry's Small Business Group was also consulted prior to the original consultation in 2005. It was thought that the impact on small business should be limited as the introduction of permit schemes under the proposed 200[7] Regulations would predominately affect local and national highway authorities and utilities (i.e. water, gas, electricity and telecommunication companies) which are larger businesses.

Options

Do Nothing

23. The current regulations for utilities' street works (The Street Works (Registers, Notices, Directions and Designations) Regulations 1992)⁸ would continue to apply in their current form across the whole of England. It should be noted that these are the subject of another consultation exercise⁹ and it is anticipated that they will change in the coming year. The replacement 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.
24. 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.
25. Under NRSWA, utility promoters have a statutory duty¹⁰ to notify highway authorities of certain details of activities which 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.

⁸ Statutory instruction 1992 number 2985

⁹ This consultation can be found on the DfT website:
http://www.dft.gov.uk/stellent/groups/dft_roads/documents/divisionhomepage/612852.hcsp

¹⁰ ss54 to 56 of NRSWA refer

26. The Department 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.
27. 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 is not given at all.
28. Currently 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.
29. 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 which 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 the network management duties. Difficulties can arise if the network management part of the authority is unaware of those activities.
30. In terms of what the highway authority can do in the light of the information provided to it, it is only where serious disruption is likely to occur that a highway authority 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.
31. By following the 'do nothing' option, these 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.

Permit Schemes

32. 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 substantial commitment will be required by a highway authority to run a permit scheme and it may not be appropriate to all. Thus permit schemes would not be mandatory.
33. Establishing permit schemes would involve utilising the powers in Part 3 of TMA to set up a system of permits in place of the NRSWA notice system. Under the permit system proposed by the Department, works cannot be undertaken on the highway without a permit, and conditions may be imposed by the Permit Authority in relation to works which 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.
34. A disadvantage of the permit scheme approach is that the increased focus on managing the road network, together with the new function of deciding whether or not to issue a permit allowing proposed works to proceed will take additional resources. It is accordingly 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. As the fees will cover only a proportion of the costs of operating a permit scheme, it is to be expected that highway authorities will face additional costs also.

35. 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 activities should be covered by permit schemes;
 - which streets should permits schemes cover;
 - permit fees; and
 - what conditions should highway authorities be able to attach to the granting of a permit.
36. Under the version of permit schemes the Department proposes, a permit scheme 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; 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.
37. Equally, a highway authority may choose not to operate a permit scheme but to continue to operate under the existing NRSWA notification system.
38. In developing the 200[7] regulations and 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

39. The Regulations provide for fees to be paid by utility companies for permits. Following the 2005 consultation, Ministers have decided that fees should not be payable by authorities for their own activities.
40. The TMA requires that the Secretary of State must try to ensure that the fees payable do not exceed such costs of operating the scheme as may be prescribed¹¹. The prescribed costs are described in the Regulations as the proportion of the costs of operating the permit scheme incurred by the Permit Authority in relation to private sector statutory undertakers (as opposed to the proportion incurred in relation to the activities of the highway authority)¹².
41. Fees are set in advance, before the costs are fully known, and are therefore based on estimates of costs. The Department 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.

¹¹ s37(9) of TMA

¹² Regulation 29

42. When applying to the Secretary of State to operate permit schemes, the authority must provide evidence to justify their operating a permit scheme. In so doing they must quantify the benefits (social, economic and environmental) that they expect to be realised.
43. When considering applications the Department 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. The proposed KPIs are at Annex B.

Option 1: Standard Permit Fee Model

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

46. An alternative approach discussed by the PWG has been adopted instead. A maximum fee model is proposed, capping fee levels through the Regulations and Statutory Guidance.
47. A local highway authority, as part of the application process to the Secretary of State 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). 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 Secretary of State must approve schemes before they come into effect (and has power to vary them)¹³.

Types of Permit Schemes

Option 1: Non-standard Permit Schemes

48. 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.
49. If the 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. Especially in a city like London where utilities will be dealing with many different authorities, this could result in significant complications and additional running costs.

Option 2: Standard Permit Scheme

50. As set out in the Regulations and Statutory Guidance, the process for applying for a permit and which activities are covered by schemes will have certain common features in all areas

¹³ ss34 and 36 of TMA.

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.

51. A highway authority cannot operate a permit scheme until it has submitted a formal application to the Secretary of State for Transport who may approve the application and give effect to the scheme by Order. A highway authority, as part of its application to the Secretary of State, must provide evidence to justify the permit scheme (including the fee level) they wish to operate. The Secretary of State 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.
52. Subsequent to the 2005 consultation, Ministers also made the decision 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 use the new noticing regime on the minor roads; or
 - requiring permits on minor roads (i.e. category 3 or 4) only but use the new noticing regime on categories 0, 1, 2.
53. 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 will be set out in the Regulations.
54. 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.
55. All this information related to a permit will be held on the authority's permit register.
56. 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.
57. Statutory Guidance for highway authorities preparing permit schemes has been developed, as has a non-statutory 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

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

Race Equality Impact

58. There are no race equality impacts to any of these proposals.

Environmental impact

59. The introduction of Permit Schemes is intended to reduce disruption on streets. It is not possible to quantify the exact environmental impact at present. But it is anticipated that by reducing congestion there will be an associated improvement in the levels of air quality, as vehicle emissions, caused by stationary vehicles, will be reduced.
60. The power provided by the Regulations for authorities to grant permits and apply conditions to control activities on the street will facilitate greater co-operation between highway authorities and utilities resulting in better planning and co-ordination of street works. This in turn should result in better co-ordination of road excavations and a reduction in duration of works.

Disability Impact Assessment

61. There are no disability impacts to any of these proposals. Existing legislation which requires promoters to provide for people with disabilities remains.

Benefits

62. 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.
63. The fundamental difference between a permit scheme and the noticing system, current or proposed, is that a permit scheme enables the highway authority to be proactive, to take charge and effectively manage and co-ordinate all activities (both utility 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

64. 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.

65. Two studies have been carried out in recent years to try to assess the level of disruption caused by works¹⁴ in the street. Halcrow produced a report in July 2004 for the Department for Transport which estimated the annual costs of disruption caused by utility works in England in the year 2002/03 at some £4.3 billion. This RIA bases its assessment of benefits on this work. In response to the 2004 report, National Joint Utilities Group ("NJUG") commissioned Professor Phil Goodwin to review Halcrow findings. This study adopted a different approach and provided a £1 billion estimate of the cost of congestion caused by street works. Although this is a large variation, it does confirm that the cost of this congestion has a significant impact on the operation of the road network.
66. The Department for Transport 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 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. 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
Source Halcrow Group					

67. 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. Halcrow 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 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

68. Using Halcrow's figures, the possible direct financial 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.

¹⁴ Works refers to street works - i.e. works in the highway by undertakers, usually utility companies of their contractors, to install or maintain apparatus in or under the highway..

% reduction in congestion	Benefit for % of street works requiring permits		
	1%	10%	30%
1%	£0.43m	£4.3m	£12.9m
2%	£0.86m	£8.6m	£25.8m
5%	£2.15m	£21.5m	£64.5m
10%	£4.3m	£43.0m	£129.0m
The above estimate is based on 1.2 million works a year			

69. We consider these figures to be cautious. If compared to the cost to utilities of introducing a permit scheme (see Annex D) it can be seen that a 2% reduction in congestion across 30% of street works outweighs those costs.
70. 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 double that 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.
71. 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. However there is an opportunity to undertake works in a more efficient manner with better planning and co-ordination. For example, using the approach of a single pass reinstatement rather than separate interim and permanent reinstatements. 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.
72. We anticipate that highway authorities in the larger urban areas, such as London, will apply to operate permit schemes. In such areas, streets are more congested and greater benefits in

¹⁵ As the noticing system will not operate over those streets where a permit scheme is in operation, there is a linear relationship for the % reduction in congestion between the notices and permit schemes. However it 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.

reducing congestion would be expected. The 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

73. 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.
74. However, 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.
75. 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 i.e. reductions in the noise that activities create for those living or working nearby.

Costs

76. Permits schemes will impose costs on two groups of people: (i) the highway authority operating them, and (ii) utility activity promoters who have to apply for permits to carry out their activities in the street.
77. 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 Secretary of State by Order) will incur additional costs even though they will not pay a fee for their own permits. However it is expected that the benefits of reducing delay and disruption realised from running a scheme will outweigh the costs. Highway authorities, in applying to the Secretary of State to operate a scheme, will be required to provide evidence that the cost of running the scheme will be offset by the expected benefits.
78. Also the highway authority, as part of the application process to the Secretary of State, 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, the Department 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.

79. 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 & TS	Road category 3 & 4 non TS
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
		Permits Variation Fee
	category 0, 1 and 2 and traffic sensitive streets	£40
	category 3 and 4 non traffic sensitive streets	£35

80. Discounted fees will be available. This allows authorities flexibility to respond to different circumstances and possibly offer incentives for certain behaviours. The principle of discounts was agreed by the PWG where there was either co-operative working within the same site by different promoters (e.g. trench sharing) or where there are applications for two or more permits that are actually part of the same project (e.g. involving different streets), provided the related applications are all made at the same time. Annex C provides the rationale used in calculating these fees. The proposed permit fees have been discussed with the PWG and with a sub group of local authorities and utility representatives. However a consensus was not reached and the Department has taken account of the views of both sides in determining the maximum fee levels.
81. Where an authority chooses to operate a scheme, it will be able to offset the income which 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 will need to set the cost of operating the scheme in relation to authorities' 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 Secretary of State that the authority has considered this.
82. 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 it cannot

comply with the terms of its permit, including any of the conditions attached - for instance if it cannot complete the work by a specified deadline or it wishes to excavate a greater proportion of the road than originally proposed - then it should apply for the permit to be varied or extended.

83. 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.
84. 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.
85. 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 July 2008 for all statutory undertakers and highway authorities. Implementation of the Regulations for Street Works (Registers, Notices Directions and Designations (England) 200[7] 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. However there will be some cost involved in updating the EToN system to accommodate permits but we do not consider that this will be significant to either activity promoters or highway authorities.

Balance of costs and benefits

86. 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.
87. 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.
88. 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. It is not intended that they should produce surplus revenue for the highway authority.
89. 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.
90. Utility promoters will need to pay for permits for those of their activities which are subject to permit schemes. The additional costs to them will fall into two categories:
 - the permit fees themselves; and

Annex D: Partial Regulatory Impact Assessment for Permit Schemes

- any changes required to their operating systems to allow them to apply for and handle permits.
91. 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 approximately 150 local highway authorities in England which would be entitled to apply to operate a permit scheme. In addition, the Secretary of State for Transport (through the Highways Agency) and the Secretary of State for Culture, Media and Sport (through the Royal Parks Agency) are also able to operate schemes 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.
 92. 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 proposed Street Works (Registers, Notices, Directions and Designations) (England) Regulations 200[6] would 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 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.
 93. The potential overall costs imposed by permits fees, based on the maximum fee levels set out in table 2, are outlined at Annex D. It is estimated that if 30% of street works require permits, the cost to utilities will be £22M. If compared to the benefits from reduced congestion at table 3, a 2% decrease is estimated to deliver £25.8M benefit. These benefits are estimated on utility promoters' activities only and may be expected to increase (possibly doubling) if all activity promoters' activities are included.
 94. 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 65 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 activities category in Table 3, i.e. "standard" rather than "major" activities, in which case, the fee which the undertaker had to pay would also be lower.
 95. To use the example at para 65 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.
 96. On balance, the Government believes that the benefits that permit schemes could deliver through reduced disruption potentially outweigh the additional costs which schemes impose on those carrying out activities.
 97. The 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 Secretary of State has power to vary or revoke a permit scheme under s36 of the TMA and can use this power to make any changes to schemes he considers appropriate (following consultation) in the light of the review.

Small Firms Impact Test

98. The Department of Trade and Industry's Small Business Group was consulted prior to the original consultation in 2005. It was thought that the impact on small business should be limited as the introduction of permit schemes would predominately affect local and national highway authorities and utilities (i.e. water, gas, electricity and telecommunication companies).
99. The smaller telecommunication companies are represented on the working group drawing up details of permit schemes by a nominee put forward by the UK Competitive Telecommunications Association (UKCTA).
100. Representatives of small businesses will also be consulted as part of the follow-up three month public consultation on the draft proposals.

Competition Assessment

101. A competition filter test on the likely effect of the Regulations was completed.
102. 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.
103. Water and electricity companies (such as Thames 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, we do not believe that the regulations would have a significant effect on competition in any of the three sectors.
104. 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.
105. We 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.

Enforcement, sanctions and monitoring

106. Regulation 18(1) provides that where works are being undertaken without a permit or in breach of a condition, the Permit Authority may issue a notice to the offender to take remedial action (which may involve removing the works). If a utility company does not comply with the notice within the reasonable timescale specified, the Permit Authority is authorised to take reasonable steps in respect of the non-compliance and recover from the offender the costs of doing so.
107. In addition, it is a criminal offence under regulations 19 and 20 for a utility company to undertake works which require a permit without a permit or to breach a condition. Permit Authorities may prosecute offenders through the courts in relation to an offence, or may issue Fixed Penalty Notices (FPNs) in relation to them. A FPN gives the offender an opportunity to avoid court proceedings by paying a financial penalty in respect of the non-compliance.

Annex D: Partial Regulatory Impact Assessment for Permit Schemes

Discussions are taking place with HM Treasury to develop policy for how the authority will be able to use the proceeds from FPNs.

108. An undertaker found guilty of the offences under regulations 19 and 20 will be subject to a fine on summary conviction of up to £5,000 (level 5).
109. The proposed level of FPN fine is £250, to be paid within 36 days of the FPN being given. A discounted amount of £160 applies where the FPN is paid within 29 days starting with the day on which the FPN is given.
110. Under the Regulations the Permit Authority may withdraw a FPN and instead bring court proceedings in respect of the offence. The Department considers that this may be appropriate in circumstances where it becomes apparent after a FPN has been issued that the higher fines potentially available following conviction are justified - for example, where it becomes apparent that the utility company is routinely not complying with its obligations under the permit scheme.
111. Giving the Permit Authority the flexibility of withdrawing a FPN and taking the offender to court instead could encourage better compliance by poorly performing promoters. Authorities are likely to use such a power sparingly because of the costs involved in going to court and because any fines go to the Consolidated Fund (rather than to the authority, as is the case with FPN penalties).
112. The Department is committed to review permit operations after a year of operation of the first scheme to provide evidence that permit schemes are delivering the expected benefits. To this end a contract is currently out for tender to carry out a review 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;

and in particular will have regard to the appropriateness of permit fees set.

Annex A: Permits 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

Wales National Assembly

National Street Works Highways Group

National Joint Utilities Group

Highway Agency

Blaenau Gwent CBC

Annex B: Proposed Key Performance Indicators

The purpose of KPIs in relation to permit schemes is to monitor that the Permit Authority is treating all promoters, including its own authority's activities, in an equitable way.

The KPIs are designed to be meaningful, easily measurable and capable of being simply extracted from databases already in use for the operation of permit schemes. The following KPIs will be used where permit schemes are in operation.

<p>1. The number of agreed extensions</p>
<p>This KPI will be broken down by promoter and by Activity type road category and will be presented as a percentage of the total number of occasions that an extension has been requested. This KPI will identify where promoters have issues with duration estimation and how the permit issuing authority deals with them.</p>
<p>2. The number of occurrences of waiving the notice period</p>
<p>This KPI will be broken down by promoter. It will identify the response of the authority to requests for starting activities in advance of the required notice period. Whether an early start request was made and agreed.</p>
<p>3. Number of situations where a FPN is given or a FPN would have been given if highway authorities were subject to FPNs</p>
<p>This will be broken down by promoter. This will require an equivalent system for highway authorities' own works and will indicate an authority's approach to dealing with breeches of conditions and working without a permit. Allowance will need to be given for any FPNs that are withdrawn because the authority accepted that they had been incorrectly served</p>

There will be other KPIs in place, such as the monitoring of the inspections of activities, that have not been developed specifically for permit schemes.

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 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; it allows the fee levels to reflect the work involved for different categories of activities; 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 an maximum will allow the authorities with lower costs to go ahead (subject to meeting any other requirements and gaining the approval of the Secretary of State) and should encourage authorities to develop efficiently operated schemes. Individual authorities will still have to demonstrate their cost basis in 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 numbers of activities in each category. The predominance of activities that are minor works and on the non traffic sensitive category 3 and 4 roads therefore has considerable influence on the total.