

New Roads & Street Works Act 1991 - Section 50

Street Works Licence Application for Placing or Repairing Apparatus in the Highway Notes on Guidance for Applicants (SWL1)

(Including Information for Private Undertakers relating to Fixed Penalty Notices and NRSWA Section 74 charges)

1. The person granted a Street Works Licence becomes an Undertaker for the purpose of the New Roads and Street Works Act 1991, and therefore attracts the relevant duties and responsibilities imposed by the Act and associated Secondary Legislation and Codes of Practice. (NB Those applicants not familiar with the requirements of this legislation are strongly advised to appoint a contractor with the appropriate knowledge and accreditation to help complete the application and to conduct the works on their behalf).
2. Financial penalties may arise to the licence holder for non-compliance with the relevant statutory duties or licence conditions. Applicants should note that this liability cannot be delegated to any other person or organisation.
3. The requirement to obtain a Street Works Licence applies to any person or organisation (other than anyone acting under a statutory right) who wishes to place, retain and thereafter inspect, maintain, adjust, repair, alter or renew apparatus, or change its position or remove it from the Highway.
4. The term apparatus includes drains, cables, ducts, sewer pipes, water and gas pipes, etc. both under, over, across, along and upon the Highway.
5. **NEW APPARATUS & EXISTING APPARATUS**
Street Works Licence Application must be completed by the applicant for authorisation to place and retain apparatus in the highway and to work on existing apparatus in the highway, and this must be submitted to the Street Authority with the required information stated on the application form
6. A Street Works Licence to place apparatus or Consent to Work on existing apparatus in the highway will only be granted to the owner(s) of apparatus or his Successor in Title. Owners should note their Statutory duty to secure that the apparatus is properly maintained at all times.
7. Applicants should note that:

Special conditions may be imposed by the Street Authority:

- (a) In the interests of safety
- (b) To minimise the inconvenience to persons using the street, having in particular regard to people with a disability.
- (c) For Traffic Sensitive Streets, Streets with Special Engineering Difficulties and Protected Streets and to protect the structure of the street and the integrity of the apparatus in it.

NB. The Applicant must strictly adhere to these conditions.

8. The Duty of Care: Controlled Waste Transfer Note (Form SLW7) must be completed where any waste from the excavation has to be disposed of. A copy of the completed form must be retained by the Licence Holder and a copy given to the person accepting the waste.
9. The Licensee must permit the Street Authority to monitor his or her contractors' performance throughout all stages of street works. These are:
 - (a) Signing, guarding and excavation
 - (b) Signing, guarding and reinstatement
 - (c) Immediately after permanent reinstatement
 - (d) Between 6 and 9 months after permanent reinstatement
 - (e) During the one month preceding the end of the guarantee period. (This period will begin from the date the Street Authority is notified of the permanent reinstatement and will be for 2 years for excavations up to 1.5m deep and 3 years for deeper).

However, whilst individual inspections will be carried out at each of the defined stages listed above [(a) to (e)], where works are found to be defective the Highway Authority will apply the appropriate Defect Procedure and charge the Licensee in accordance with the laid down procedure in the Code of Practice for Inspections. The cost of such inspections, once found to be defective, will be £25.00 each to a maximum of three. Licensees should be aware of this procedure.

10. The Licensee must inform the Street Authority of the completion of the reinstatement no later than 2 hours from completion of the works. If works were completed after 16:31, the works stop notice must be received no later than 10:00am the next working day following completion onsite, stating whether it is interim or permanent. If an interim reinstatement is carried out this must be made permanent within 6 months.
11. The Licensee must complete and submit a Registration of Works form (SWL5) to the Street Authority within 10 days of completion of the works and clearing the site.
12. Where the apparatus in respect of which an application for a Street Works Licence is made to the Street Authority is to be placed or retained on a line crossing the street, and not along the line of the street, a person aggrieved by:
 - (a) The refusal of the Authority to grant him a licence
 - (b) Their refusal to grant a licence except on terms prohibiting its assignment or
 - (c) Any terms or conditions of the licence granted to him, may appeal to the Secretary of State.
13. When submitting Registration of Works form (SWL5) the Licensee must provide a detailed drawing to Scale 1/2500 showing the actual depth of the apparatus, and its location measured against fixed objects/structures.
14. Prior to issues of the licence, Form SWL6 (Statutory Undertakers Declaration/Requirement) must be circulated with a copy of the plans to all relevant Statutory Undertakers to identify whether their

apparatus will be affected by the proposed works. This circulation will be undertaken by the applicant.

15. The attention of the Licensee is also drawn to the following:

- (a) The Code of Practice "Specification for the Reinstatement of Openings in Highways" which outlines the option requirements of this Authority in relation to interim/final reinstatements as required by Section 71 of the New Roads and Streetworks Act 1991.
- (b) All apparatus should be laid in compliance with National Joint Utilities Group Publication No. 7 or its approved update which is available from the NJUG, 30 Millbank, London SW1P 4RI.
- (c) The Code of Practice "Safety at Street Works and Road Works and Chapter 8 of the Traffic Signs Manual 1991, which gives specific guidelines on the safe signing, lighting and guarding of temporary works on the Highways, as required by Section 65 of the New Roads and Street Works Act, 1991.
- (d) The Street Works (Qualifications of Supervisors and Operatives) Regulations 1992 which set out the criteria of qualifications for persons excavating in the Highway as required by Section 67 of the New Roads and Street Works Act, 1991.

The above mentioned Codes and Regulations, together with a copy of the Act are available from The Stationery Office Bookshops, 123 Kingsway, London WC2B 6PQ and 68-69 Bull Street, Birmingham B4 6AD.

16. Please note that you may incur penalties or charges if you do not provide us with accurate and timely notification of works on the highway. Your attention is drawn to fixed penalty notices under S95A New Roads and Street Works Act 1991(NRSWA) and overrun charges under S74. Failure to comply may result in the issuing of a fixed penalty notice or an overrun charge.

Simple explanation

If you do not submit the correct notices on time then you are liable to a fixed penalty charge. You should make sure that the date on your initial application is correct and let us know if it has changed. The works start, stop and registration forms must be sent in on time. If the works are likely to overrun the end date on your notice then you need to apply for an extension to the duration. If you do not do this and the works continue beyond the end date on your application you are liable to incur Section 74 charges. The daily charges are listed in the table below.

Detail

Section 95A gives the "Street Authority" (which in the case of maintained highways is the same as the Highway Authority), the power to issue fixed penalty notices for certain specified offences under NRSWA. There are at present the seven offences under sections: 70(6); 74A(11).and 74(7B). Explanations are given below of the offences:

s.70(6) - Failure to provide registration details (Partial or Full) of interim or permanent reinstatement within 10 working days from the date on which the reinstatement is completed

s.74A(11) This only applies if an Authority is operating a lane rental scheme (Permits)

s.74(7B) - Failure to provide a notice of Actual start date, Revised duration or works clear/closed (Works Stop)

Permit offences:

The Permit Scheme Regulations create two offences for statutory undertakers

- Carrying out activities on the street without a permit, or in the case of immediate works not applying for a permit within two hours of the works starting
- Carrying out activities on the street or highway in a way that contravenes the conditions attached to a permit, or the conditions that are applied to an immediate activity before a permit is issued for those activities.

Working without a Permit

- Regulation 19 creates the criminal offence for an undertaker or someone acting on its behalf to undertake works without a valid permit.

Working in Breach of Conditions

- Regulation 20 creates the criminal offence for an undertaker or someone acting on its behalf to undertake works in breach of a condition.
 - The conditions included in a permit will be recorded in the permit register. If a permit is varied, a new permit will be issued and any new conditions will be included and recorded. The Permit Authority and activity promoter will endeavour to ensure that conditions are precise so that both can easily check performance on site against the approved conditions.
 - Conditions will apply to immediate activities for the period before a permit is issued. The WaSP scheme authorities may also detail further conditions that should be applied to all immediate activities within their Addendum or as part of the WaSP scheme Operational Guidance.

The fee is £120 but if paid in less than 29 calendar days the charge will be reduced to £80, for Regulation 19 the FPN charge is £500 unless paid within 30 days, this reduces to £300. If after 36 calendar days the FPN remains unpaid we are able to start legal proceedings but that will not affect the outstanding charge against them.

The fixed penalty notice must be served as soon as reasonably practicable and in any event no more than 91 calendar days (not working days) after the commission of the offence, beginning with (and therefore including) the date of its commission. For example in respect of an offence under s55(5) (beginning to execute works without notice or before the end of the notice period) the date of the offence will be the day the undertaker started the work. In the case of the other offences

(which all involve failures to give notices or to comply with duties) the offence will be committed on the date on which the period for serving the notice or complying with the requirement expires.

If the Street Authority is intending to proceed with formal action in a particular case then a FPN will need to be served promptly to give time for the issue of proceedings in the magistrates court if the fixed penalty is not paid. Once the FPN is given the undertaker has 36 calendar days to pay (beginning with the date when the FPN is given) and during that time the Street Authority cannot commence magistrates court proceedings.

If the undertaker has agreed to accept service of FPNs electronically then a FPN is “given” on the day it is transmitted as long as the transmission is completed before 4:30pm. It can also be served personally or by first class post but if the latter then it is deemed to be received on the second working day after posting.

Prescribed periods

Major Works – 3 calendar months notice is required for works taking more than 10 working days. A minimum of 10 working days prior to the estimated start date a confirmation notice must be sent with the proposed actual start date.

Failure to do so is an FPN offence

All works, except Immediate, require a notice of actual start date, which must be received no later than 2 hours from commencement of the works. If works commenced onsite after 16:31, the notice of actual start date must be received no later than 10:00am the next working day that works have started.

All works, including immediate, require a works stop notice which must be received no later than 2 hours from completion of the works. If works were completed after 16:31, the works stop notice must be received no later than 10:00am the next working day following completion onsite.

A registration, full or interim, must be sent no later than 10 working days from completion of the works.

If works are cancelled or postponed a cancellation notice must be received no later than the next working day after the last day of the estimated duration.

Failure to provide any of the above notices within the prescribed period is an FPN offence.

If works cannot be completed within the original estimated duration, a notice of revised duration estimate must be sent as soon as possible, failure to do so will result in Section 74 charges being incurred for prolonged occupation of the highway. The charges are listed below:

Charges in relation to works occupying the carriageway during period of overrun			
Item	Description of street	Amount (£)(each of first three days)	Amount (£)(each subsequent day)
1	Traffic-sensitive or protected street not in road categories 2, 3 or 4.	5,000	10,000
2	Other street not in road categories 2, 3 or 4.	2,500	2,500
3	Traffic-sensitive or protected street in road category 2.	3,000	8,000
4	Other street in road category 2.	2,000	2,000
5	Traffic-sensitive or protected street in road category 3 or 4.	750	750
6	Other street in road category 3 or 4.	250	250

Charges in relation to works outside the carriageway during period of overrun		
Item	Description of street	Amount (£)
1	Street not in road categories 2, 3 or 4.	2,500
2	Street in road category 2.	2,000
3	Street in road category 3 or 4.	250

IMPORTANT

All communication relating to this Licence should be addressed to:
Telford & Wrekin Council, Streetworks, Darby House, Telford TF3 4JA / streetworks@telford.gov.uk / 01952
384000