

Policy for the issuing of Fixed Penalty Notices for Street Works Noticing Offences

**Traffic Management Act 2004
New Roads and Street Works Act 1991
October 2010**

DRAFT

ACKNOWLEDGEMENTS:

This document has been produced using guidance from the Department for Transport Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters, 3rd Edition (the Code), the Department for Transport New Roads and Street Works Act 1991 Technical Specification for the Electronic Transfer of Notices (EToN) July 2007 and the Department for Transport Code of Practice for Permits March 2008.

Reference has been made to the Street Works (Fixed Penalty) (England) Regulations 2007 and the National Street Works Highways Group (NSWHA) Advice Note 2008/01.

CONTENTS:

Section	Title	Page No.
1.0	Purpose and Scope of a Fixed Penalty Notice Scheme	2
2.0	Benefits and Risks	3
3.0	Delegated Powers	5
4.0	The Harrow Approach	5
5.0	Payments, Costs and Proceeds	10
6.0	Reporting Procedures	11

APPENDICES

1. Duties and obligations to which Fixed Penalty Notice offences relate
2. NSWHG Advice Note 2008/01 Fixed Penalty Notices: ANNEX A

1.0 Purpose and Scope of a Fixed Penalty Notice Scheme

- 1.1 One of the specific goals of the Traffic Management Act 2004 (TMA) is to improve the co-ordination of works by local traffic authorities in order to assist in securing the expeditious movement of traffic on local road networks and delivering the Network Management Duty (NMD). The TMA reinforces the legislation in the New Roads and Street Works Act 1991 (NRSWA) which governs Street Works operations.
- 1.2 Effective works co-ordination is dependant on accurate and timely data exchanged between works promoters and street authorities. The main purpose of the introduction of a Fixed Penalty notice (FPN) scheme is to improve the provision of data required to facilitate the co-ordination of works and assist in achieving the authority's NMD.
- 1.3 The FPN Scheme is introduced by section 41 of the TMA, which inserted sections 95A and schedules 4A and 4B into NRSWA. The TMA also provides regulations under section 37 (4) (e) to create offences in relation to the operation of permit schemes. It provides for certain offences, under Part 3 of NRSWA and TMA, to become subject to fixed penalty notices.
- 1.4 FPNs apply to all undertakers, whether statutory undertakers or holders of street works licenses under section 50 of NRSWA. FPNs may be given only for the street or part of street, in which the works take place, and cannot be issued for highway authority promoted works for road purposes.
- 1.5 The adoption of a FPN Scheme will enable the street authority to improve works co-ordination by improving undertaker notice/permit application data accuracy and timeliness, therefore improving performance in street works activities and improving working relationships between noticing/permitting organizations and street authorities.
- 1.6 At present, seven offences, under Part 3 of NRSWA and 2 offences under part 3 of TMA can be dealt with by FPNs. However section 17.6 of the CoP for Permits states "Any offences relating to other sections of NRSWA, which run in parallel to permit schemes will continue to apply. These include offences relating to reinstatements, overrunning and failure to send appropriate notices. Regarding this point 4 of the 7 offences under NRSWA will still apply to statutory undertakers if highway authorities are operating a permit scheme. However, in the case of holders of street works licenses who will still notify in accordance with NRSWA all 7 offences will apply.
- 1.7 The Secretary of State may make an order providing for offences to become (or cease to be) fixed penalty offences (subject to resolution in the Houses of Parliament). An FPN offers an undertaker the opportunity to discharge any liability to conviction for a fixed penalty offence, by payment of a penalty.
- 1.8 These offences refer to noticing failures for NRSWA and Permit offences for part 3 of TMA. Therefore, payment of a FPN does not exempt an offender from other

prosecutions or charges for offences under NRSWA or TMA. Extracts from the Code of practices relating to Noticing and Permits in appendix 1 summarise the duties and obligations to which the offences relates in each case.

- 1.9 It must be noted that there can be no prescriptive process applied to the FPN scheme and the street authority must decide on a case-by-case basis as to whether an offence has been committed that will constitute the issuing of a FPN. If the street authority believes an offence has been committed suitable evidence must be gathered in order to prove the case.
- 1.10 The authority should adopt a consistent approach to all works promoters in applying the DfT guidance in the Codes and Regulations, which advise that a FPN should be given where it has the most benefit. The authority must act reasonably and apply the same due process for giving a FPN as it would in taking the undertaker to the Magistrates' Court for NRSWA/TMA offences.
- 1.11 The penalty fee for working without a Permit is £500 and the penalty fee for NRSWA offences or working in breach of permit conditions is £120. The period for payment is 36 calendar days, beginning with the day on which the FPN is given. This may be extended at the discretion of the street authority. A discounted amount of £300 for working without a permit or £80 for NRSWA/breach of permit conditions will apply if payment is made with 29 calendar days, beginning with the day on which the FPN is given.
- 1.12 If the undertaker pays either the full penalty, or the discounted amount, within the required period, no further proceedings can be taken for the offence. If the undertaker does not pay the penalty within 36 days then the street authority may bring proceedings in the Magistrates Court for the original offence.

2.0 Benefits and Risks

- 2.1 There are a number of benefits associated with adopting and running a FPN Scheme, these include the following:
- Provision of accurate and timely data,
 - Increase in confidence of notice/permit data,
 - Increase in confidence within the street authority in its own ability to better co-ordinate works based upon this data,
 - Improved performance in street works activities,
 - A contribution to minimising disruption arising from road and street works,
 - Improved working relationships,
 - Standard reporting of data quality for all works promoters.
- 2.2 The FPN Scheme will operate on a financial penalty basis, however it must be stressed that the FPN Scheme will not be operated as a revenue or income generator for the London Borough of Harrow. FPNs will only be issued where they have most benefit.
- 2.3 The success of the scheme is dependant on the commitment of the street authority to pursue the objective of data quality improvement through escalating levels of enforcement, including prosecutions. If the authority fails, for whatever reason, to use the powers available to improve co-ordination it may suffer from poor quality noticing which may compromise the authority's in delivering the network management duty.
- 2.4 The Highway Network Management (HNM) team, on behalf of the authority, will be responsible for identifying incorrect notice/permit data and doing so within the correct time frames. Where necessary the team will carry out the enforcement process with, if required, the assistance of a legal services team.
- 2.5 The authority must collect the same evidence for an offence which it wishes to issue a FPN for as it would were the undertaker to be taken to the Magistrate's Court to be prosecuted. Failure to collect the required evidence may risk the validity of the FPN.
- 2.6 The Code provides arrangements for an undertaker to make representations if they believe that the FPN should not have been given. The street authority needs to specify on each FPN an officer, individual, or department to whom all formal written representations will be directed and dealt with. However, before making an official representation, the undertaker is encouraged to try to resolve the issue informally by contacting the officer who issued the FPN.
- 2.7 It will be necessary to have at least one officer within the HNM team to deal with the identification of incorrect and untimely notice/permit data and enforcement of offences, whether it be through advice to the undertaker, the issue of a FPN, or prosecution at the Magistrate's Court, evidence collection (either system generated or through site inspection), and dealing with representations.
- 2.8 It will be good practice for the authority to advise the statutory undertaker of the period within which they can expect a response to a formal representation. It is

proposed that the London Borough of Harrow will respond to a formal representation within 28 days of receipt of the representation.

2.9 There will be three likely outcomes from representations:

1. If the authority considers that an offence has indeed not been committed or a FPN ought not to have been given, the authority may give a notice withdrawing the FPN
2. If the authority considers that an error was made on the FPN, then the FPN must not be withdrawn but left to 'lapse' by allowing the full penalty period to pass (36 days). The street authority may then consider issuing another FPN with the corrected information, provided it can still be issued within the DfT timescale of 91 days. It is good practice to advise the undertaker accordingly
3. The authority still considers the FPN to be legitimate and the penalty remains to be paid. If the undertaker refuses still to pay the FPN the authority must be prepared to take the enforcement of the offence to the next level via prosecution at the Magistrate's Court.

3.0 Delegated Powers

- 3.1 Clarity is given in The Code that an authority may enable an agent to deal with FPNs on their behalf pursuant to the Deregulation and Contracting Out Act 1994 as amended/replaced by the Contracting Out Act 2008. Schedule 4B of NRSWA provides that an authorised officer of an authority may give a FPN and that in the notice the person named to whom payment should be made may be the street authority or person authorised to act on their behalf.
- 3.2 Careful consideration should be given to the extent of provisions of contracting out with regard to any separation of the highway authorities' responsibilities for co-ordination of works and sanctions operable through enforcement of notice/permit offences, including the issue of FPNs.
- 3.3 Harrow does not believe that the contracting out of a FPN Scheme would be a feasible option for the Borough to progress. The Harrow FPN Scheme is to be run solely for the purposes of improving the co-ordination of works activities on the network by improving the accuracy and timeliness of noticing. Any move to separate the FPN Scheme administration from the HNM team would be detrimental to the authority's ability to co-ordinate street works and fulfill the NMD.
- 3.4 Taking the enforcement of notice/permit offences through FPNs away from the HNM team could undermine the work carried out prior to the issue of a FPN such as communication, error correction and advice given by the team.
- 3.5 The administration of running two separate systems, one to manage the co-ordination of street works up to enforcement through FPNs, and one to issue FPNs may be impractical in real terms.
- 3.6 The authority must give a FPN through its authorised officer, who should be responsible for ensuring that the approach and procedures are adhered to in order to facilitate the notice data quality improvement. Even when contracted out, the street authority remains responsible for ensuring that the powers under section 95A of NRSWA and section 37 of TMA are used correctly and responsibly. Even when duties relating to FPNs are contracted out by the street authority, the street authority should still retain an officer of the appropriate seniority to take any necessary decisions regarding representations or prosecutions.

4.0 The Harrow Approach

4.1 At present Harrow is issuing FPN warnings for offences committed in readiness to introduce a FPN scheme at the same time as becoming a permitting authority. This approach (detailed in section 4.3) has acted as a learning curve for both parties to gain a good understanding of the requirements, processes and expectations of a formal scheme being introduced.

4.2 Harrow, as street authority, may pursue one of the following three options upon discovery of a noticing/permitting offence:

- Advice
- Issuing of a FPN
- Prosecution of Offences

4.3 ADVICE

4.3.1 In the first instance of a works promoter committing a noticing/permitting offence through failure to follow the requirements in the EToN Technical Specification and Code, Harrow may choose not to give a FPN but record the failure to comply and request the works promoter to resolve the problem in terms of correcting the notice failure.

4.3.2 The HNM team may choose to offer such advice in a number of ways, including, but not limited to:

- A telephone call to the works promoter together with recorded comments sent via the EToN system
- Following the error correction guidance as set out in 8.3.16 of the Code
- Feedback to the works promoter via formal letter and/or reports
- Meetings between the street authority and the individual works promoter to discuss issues/concerns

4.3.3 Harrow will document the evidence given to a works promoter as this will provide essential information to pursue further enforcement actions where appropriate and will demonstrate reasonableness.

4.3.4 When offering formal advice through the error correction process, Harrow will refer to the guidance in 8.3.16 of the Code and the EToN Technical Specification and may request a non-statutory correction notice from the works promoter.

4.3.5 This approach will ensure that the Local Street Works Register (LSWR) is an accurate database of the works promoter's activities on the public highway and will aid good co-ordination and network management.

4.3.6 Harrow will need to determine on a case-by-case basis, or through the monitoring of individual works promoters performance, at what point the offer of advice is no longer deriving benefit; i.e. where a works promoter has perhaps been offered advice on a number of occasions as to the accuracy and timeliness of their data and for which improvements have not been seen.

4.4 ISSUING OF A FIXED PENALTY NOTICE

- 4.4.1 The HNM team will determine on a case-by-case basis when it is appropriate to issue a FPN. The Code recommends that FPNs should be issued where they have the most benefit.
- 4.4.2 Notice/Permit data and timing inaccuracies will lead to a lack of confidence in the commitment to quality. This will impair the ability of HNM team to make informed decisions for purposes of co-ordination, and in turn affect the authority's ability to carry out the NMD. The giving of a FPN may be appropriate to provide greater levels of confidence in the notice/permit data and should be seen as a means to drive improvement in the submission of this data by the works promoter.
- 4.4.3 The giving of a FPN is not dependent on any conditions; therefore it is the responsibility of the HNM team to consider the facts of each individual case before reaching any conclusion. When considering whether to issue a FPN the HNM team will consult ANNEX A of the NSWHG Advice Note 2008/01 on Fixed Penalty Notices, contained in this policy document as appendix 2. The final decision of whether to issue a FPN will be decided at the discretion of the responsible FPN Issuing Officer within the HNM team.
- 4.4.4 The DfT guidance in the Code advises that when giving a FPN, the same process should be applied as if taking a prosecution; this includes the collection and documentation of evidence. Ultimately, the giving of a FPN may lead to a prosecution for the original offence where the FPN has not been paid. Harrow will seek legal advice with regard to prosecutions and as a result will ensure that all necessary documented evidence is collected and available to support the reasonable issue of a FPN prior to a FPN being issued. FPNs will not be issued if evidence of an offence being committed is not available to take to full prosecution if the FPN were not to be paid.
- 4.4.5 To ensure parity, although it is not possible to issue a FPN to an authority works promoter, Harrow will be identifying KPIs to be used for monitoring the performance of internal works promoter noticing/permitting compliance. These KPIs will be developed over time and will be used to 'score' internal works promoter performance. No decision has been made as to whether to associate any kind of financial penalty to the KPIs, but failure to comply and improve will be treated seriously by the authority as it will have a detrimental affect on Harrow ability to carry out the NMD.
- 4.4.6 Unless requested otherwise by the undertaker, all FPNs will be issued electronically via our eton system (except in the cases where these provisions are not available). Undertakers are advised to contact and make arrangements with the FPN Officer if they are unable to receive FPNs via eton and must agree an alternative with the HNM team.

4.5 PROSECUTION OF OFFENCES

- 4.5.1 Prosecutions under NRSWA/TMA have been available to the street authority since the introduction of that Act. However, many street authorities have found taking a

prosecution for noticing offences difficult in terms of time and resource required. The legislation and regulations have now been re-drafted in recognition that the use of a FPN scheme may be a more effective mechanism for some noticing/permitting offences whilst still retaining the option of prosecution.

Harrow may take a prosecution against an undertaker in connection with the 2 offences under TMA for permits and 4 of the seven noticing offences as set out in Schedule 4A of NRSWA. See table below (offences highlighted).

s54	(5)	Advance Notice
s55	(5)	Starting Date
s55	(9)	Cancellation
s57	(4)	Immediate – Emergency
s70	(6)	Reinstatement completion
s74	(7b)	Actual Start / Revised Duration / Works Clear / Works Closed
s74	A(11)	Actual Start / Revised Duration / Works Clear / Works Closed

Please note that all 7 offences will still apply to holders of street works licenses.

Further details are included in Appendix 1.

4.5.2 Harrow will consider the following matters when taking a prosecution for a noticing/permit offence:

- Decision to prosecute may be taken where the street authority believes an offence has been committed,
- Where a FPN has been given, a prosecution can be started only after the period for payment of the penalty has expired and the undertaker has failed to pay. It must be clear that the FPN has not been withdrawn before taking proceedings,
- Prosecution is not possible where the appropriate penalty payment has been made within the correct timescales or has been accepted by the street authority. Any discounted payment received after the expiry of the discount period will be fully refunded, as soon as practical and the promoter notified. The full payment will then be expected within the correct timescale.
- Legal proceedings must be commenced within the statutory time period (six months from commission of the offence) in accordance with section 127 of the Magistrate's Court Act 1980.
- Should the Council decide to commence legal proceedings when the FPN remains unpaid, the FPN Officer will ensure that any subsequent attempt to pay the FPN is rejected otherwise proceedings will fail.

4.5.3 The FPN scheme has been established as a means to improve notice/permit data accuracy and timeliness without the recourse to court procedures. For this reason Harrow will, where necessary, make full use of the FPN scheme as a deterrent for poor notice/permit date before taking court proceedings.

4.5.4 This does not, however remove the choice of prosecution as the first option

where a street authority considers the original offence to be of such a serious nature or where the FPN scheme has been shown to have failed in previous situations.

4.5.5 Whilst prosecution may not be the first option undertaken, Harrow will consider the benefits that prosecutions may derive to sustain improvement of noticing information.

4.5.6 When taking a decision to prosecute, Harrow will bear in mind that the expectation of the Courts will be that a fair and reasonable approach, including (where necessary) the use of FPNs has been pursued. The HNM team will consult fully with the legal department prior to taking any legal action.

4.5.7 Prosecution Timeframe

- Assuming that the 6-month period for prosecution of an offence in the Magistrate’s Court equates to 182 calendar days from commission, the following shows two possible examples for giving a FPN and the subsequent time available to commence legal proceedings.
- The table below has been reproduced from the NSWHG Advice Note 2008/01 on Fixed Penalty Notices and will be followed by Harrow for noticing offences where necessary:

Day 1	Day FPN given from commission of Offence	Day 91
Day 29*	End of Discount Period	Day 120 (91 + 29)
Day 36**	End of Full Period	Day 127 (91 + 36)
146 days (182 – 36)	Maximum period remaining to commence legal action	55 days (182 – 127)

*If day 29 falls on a non-working day, this period can be extended to the next working day.

**This period can be extended at the discretion of the authority.

Note: A FPN given after 4:30pm is deemed to have been given on the next working day.

5.0 Payment, Costs and Proceeds

- 5.1 A FPN is not an invoice and therefore does not generate a debt as it is only an offer to discharge liability to prosecution. The London Borough of Harrow Finance department will be consulted and adequate systems put in place to monitor and manage FPN payments outside the traditional invoicing systems common to a local authority.
- 5.2 The authority's preferred method of payment will be by BACS Transfer and all undertakers will be made aware of this and offered the chance to comment on whether this is a feasible method of payment available to them. If the undertaker is unable to make payment via BACS transfer the undertaker is advised to contact the London Borough of Harrow Finance department to make arrangements for alternative methods of payment. The undertaker is then expected to confirm any arrangements with the Street Authority FPN Officer.
- 5.3 All methods of payment accepted by the authority will be clearly documented on Part B of the FPN Form, although as mentioned it is the authority's intention to accept BACS Transfer payments as its primary and preferred method of payment.
- 5.4 The Street Authority and authority Finance department will request all remittance to be sent electronically to a designated FPN email account. Remittance advice will include a list of the relevant FPN numbers for which payment has been submitted cross referenced to the BACS Transfer reference, the amount being paid against each FPN and the date on which the payment has been made in order for the Street Authority to determine whether the discounted period applies.
- 5.5 The Street Authority will liaise with each undertaker to confirm the format and references to be used in the payment and remittance process prior to issuing any FPNs for noticing offences.
- 5.6 If the undertaker is unable to send remittance advice electronically via email the undertaker is advised to contact the London Borough of Harrow Finance department and FPN Officer to make arrangements for alternative methods of remittance submission. The undertaker is then expected to confirm any arrangements with the Street Authority FPN Officer.
- 5.7 All proceeds from the operation of the FPN Scheme will be used to cover the costs associated with running the scheme.

6.0 Reporting Procedures

- 6.1 It is considered good practice for a street authority to regularly report to works promoters on the accuracy and timeliness of data received for notices/permits related to their network.
- 6.2 Works promoters (including highway authority) will be made aware when they are failing to provide an adequate and timely notice/permit data which prevents the street authority from carrying out its co-ordination duties and network management obligations. This awareness may be made on a case-by-case basis by recording the failure, informing the works promoter, discussing at co-ordination meetings, giving a FPN or taking proceedings against the works promoter.
- 6.3 Harrow's HNM Team may look to develop reports to assist both the works promoter and street authority to identify and address noticing/permit offences. These may be achieved through regular information reports showing details for all works promoters including:
- The number and type of notice/permit failures
 - The representations made by works promoters who have received a request for notice correction/permit variation
 - Where FPNs have been given
 - Any action taken by works promoters to improve data accuracy and timeliness.
 - Any on-going proceedings
 - Outcome of proceedings
- 6.4 In this way the industry as a whole can review any action that may be taken to improve data accuracy and timeliness.

Appendix 1

Duties and obligations to which the FPN offences relate

Traffic Management Act 2004 : Code of Practice for Permits (Section 17 Permit Offences)

It is necessary to note particular sections of the code of practice for permits in respect of issuing FPNs as follows:

Offences (section 17.2)

The Permit regulations create two types of offences:

1. Carrying out activities on the street or highway without a permit-except immediate activities, see below, -maximum fine level 5
2. 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- maximum fine level 4

Immediate activities – permits (section 17.3.3)

A promoter can begin immediate activities without a permit but it must apply for one within two hours of starting work. The promoter can then continue working within the terms of any conditions that apply (see 11.5) and its application, for example regarding working hours. As outlined in 11.3, the permit authority should issue a permit within two days of the activity starting. Once issued, the promoter is bound by the terms in the application and any previous conditions set by the authority.

Other NRSWA offences (section 17.6)

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

Please note that only the highlighted offences in the following table from NRSWA are applicable to statutory undertakers if the highway authority is operating a permit scheme. However, in the case of holders of street works licenses all offences apply.

Taken from the New Roads and Street Works Act 1991: Code of Practice for the Co-ordination of Street Works and Works for Road Purposes and Related Matters Third Edition

Table 11.1: Summary of duties and obligations

Offence	Brief description	Duties and obligations
An offence under s.54(5)	Failure to comply with duties under s.54	<p>In certain cases prescribed in regulations prescribed periods of advance notice must be given to a street authority by an undertaker proposing to execute street works. Each notice must state the proposed start date on which it is proposed to begin the works and contain the information prescribed in regulations.</p> <p>After giving advance notice under section 54, an undertaker must comply with the requirements prescribed in regulations, or imposed by the street authority. These concern the provision of information and procedural steps to co-ordinate the works with other proposed works of any description. If an undertaker who has given advance notice under section 54 has not, before the starting date specified in the notice, given to the street authority a notice under section 55 in respect of the works, he must within such period as may be prescribed in regulations (Regulation 8(2)) give to that authority a notice containing prescribed information.</p>
An offence under s.55(5)	Beginning to execute works in contravention of s.55	<p>In relation to certain types of street works an undertaker must give prescribed periods of advance notice stating the proposed start date and containing information prescribed in regulations. This notice must be given to the street authority, to any other relevant authority, and to any other person having apparatus in the street, which is likely to be affected by the works. The undertaker must not begin the works without notice, or before the end of the notice period, without the consent of those to whom notice is required to be given.</p>
An offence Under s.55 (9)	Failure to give notice in accordance with s.55(8)	<p>If the notice of starting date ceases to have effect, the undertaker must give a further notice containing such information as may be prescribed in regulations and within the prescribed period. This notice must be given to the same people as the notice of starting date (see above).</p>

Offence	Brief description	Duties and obligations
An offence under s.57(4)	Failure to give notice in accordance with s.57	Where emergency works are of a kind which either do, or would, but for certain provisions in Schedule 3A NRSWA, require a notice of starting date under section 55, an undertaker executing such works must give notice stating his intention or, as the case may be, the fact that he has begun to execute the works. The notice must also contain such other information as may be prescribed in regulations. The notice must be given as soon as reasonably practicable, and in any event within two hours (or such other period as may be prescribed), to the persons to whom a notice of starting date would be required to be given under section 55 (see above).
An offence under s.70(6) consisting of a failure to comply with subsection (3) or (4A)	Failure to comply with requirements to give notice of completion of reinstatement	Section 70(1) imposes a general duty on the undertaker to reinstate the street. The undertaker must, within ten working days from the date on which the reinstatement is completed, give notice to the street authority of that completion. The notice must state whether the reinstatement is permanent or interim, and give such other information about the reinstatement as may be prescribed in regulations. In the case of an interim reinstatement, the undertaker must within ten working days from the date on which the permanent reinstatement is completed, give notice to the street authority of that completion. The notice must contain such other information about the reinstatement as may be prescribed.
An offence created by regulations made under s.74A (11)	Failure to give a notice required by regulations under s.74 A (Charge determined by reference to duration of works)	The Street Works (Charges for Occupation of the Highway) (England) Regulations 2001 create a criminal offence in respect of any failure to give a notice required by the regulations. An undertaker executing street works in a highway, to which these regulations apply, must, not later than the end of the day following the day on which the works begin, give the approved highway authority an "actual start of works notice". This should confirm the start date and specify by reference to the nationally consistent street gazetteer, the street or streets in which the works are to be carried out. Once an undertaker has completed interim reinstatement, a 'works clear notice' must be sent to the approved highway authority, not later than the end of the day following the day on which the highway was returned fully to public use. An undertaker who has completed permanent reinstatement must give the approved highway authority a written 'works closed notice', not later than the end of the day following the day on which the highway was returned fully to public use.

Offence	Brief description	Duties and obligations
An offence created by regulations made under s.74(7B)	Failure to give a notice required by regulations under s.74 (charge for occupation of the highway where works unreasonably delayed)	<p>The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2001 create a criminal offence in respect of any failure to give a notice required by the regulations. An undertaker executing street works in a highway, to which these regulations apply must, not later than the end of the day following the day on which the works begin, give the highway authority an “actual start of works notice”. This should confirm the actual start date and specify, by reference to the nationally consistent street gazetteer, the street or streets, in which the works are to be carried out. Once an undertaker has completed interim reinstatement, a written “works clear notice” must be given to the highway authority not later than the end of the day following the day on which the highway was returned fully to public use. An undertaker who has completed permanent reinstatement must give the highway authority a written “works closed notice” not later than the end of the day, following the day on which, the highway was returned fully to public use. If the duration of the works will exceed the prescribed period, a notice shall be given to the highway authority containing an estimate of the likely duration. The estimated duration of works should:</p> <ul style="list-style-type: none"> • for works for initial placing of the apparatus, be given with the application for a licence, • for other works (not emergency) be given with the section 55 notice, • for emergency works be given as soon as practicable after the works begin. <p>This estimate is assumed to be agreed by the authority, unless it gives a written notice to the undertaker written notice of its own estimate of a reasonable period for the duration within five days (major or standard works) or two days (minor or immediate works) of receiving the undertaker’s estimate. If the duration of the works is exceeds the prescribed period, or is likely to exceed either the period stated in a previous estimate of duration or the period agreed or determined under section 74(2) to be a reasonable period, the undertaker shall give a notice in writing containing an estimate or a revised estimate of duration. This estimate is assumed to be agreed by the authority, unless it gives a written notice to the undertaker of its own estimate of a reasonable period for the duration within two days of receiving the undertaker’s estimate.</p>

Appendix 2

NSWHG Advice Note 2008/01 Fixed Penalty Notices – Annex A **Guidance on potential NRSWA Offences covered by FPNs**

The FPN scheme is aimed at encouraging data accuracy and timeliness from all works promoters to improve co-ordination of all works and contribute to the aims of minimising disruption.

In all circumstances, street authorities should pay due consideration to the following general issues.

- Is the notice the correct type?
- Has the notice been sent on time?
- Does the notice contain all relevant required information? Is that information correct?

Whilst much of this information can be checked via EToN, some of it will necessitate a site visit to ascertain if the information contained on the notice reflects the situation on site.

- Is the works promoter working at the exact location as indicated on the notice?
- (including footway/carriageway)
- Has the works location altered without the necessary revision to the notice?
- Is the works promoter working in accordance with the dates and timing as stated on the notice?
- Is the traffic management as set out on the notice?
- Has the works promoter commenced early without agreement?
- Is the works promoter working without a notice?
- Have remedial works been started or completed without the appropriate notice? Are the works interim or permanent as indicated on the notice?
- Have the works not taken place and not been cancelled?

Within sections 54, 55, 57, 70 and 74 of NRSWA there are a number of offences that may arise in various ways. In addition to the advice given, street authorities should also consider the issues set out below. When considering if an offence has occurred, street authorities will need to decide if giving a FPN is the most appropriate course of action. Should they do so, reference should be made to the particular offence codes detailed in Annex D and the Code.

There are a number of other offences under NRSWA and these are not covered in this guidance note

It should be noted that this is not intended to be an exhaustive text but could be used as a guide to the potentially more common situations.

Section 54 : Advance Notice of Major Works

Under s54, the following Notice is affected as stated under the regulations: -

Major Works Notices (three months notice period)

The Prescribed Notice Information

The following information is required to be submitted on the s54 notice as per the regulations:-

- Unique reference number
- Date and time of entry (this is the time that the notice has been entered on the register) Expected start date
- Expected completion date
- Type of works (i.e. Major, Standard, etc.)
- Whether works are being carried out on a traffic sensitive road
- Whether works are being carried out on a road with special engineering difficulty designated
- Location of works
- The unique street reference number (USRN) that the works are to be carried out
- The ordnance survey grid reference (OSGR) of the mid-point of the works or at each end of trench works
- Estimated inspection units
- General description of the works in plain English Traffic management proposals

There are a number of mandatory fields required within a notice, which are not contained within this list. The omission of any of this mandatory information from a notice may, strictly, be considered as the submission of an invalid notice and a potential offence.

However the street authority should seriously consider whether it is appropriate to give a FPN in these cases and whether their actions will be seen as reasonable.

Potential Offences Under Section 54

Section 54 notice not submitted

The offence of non-submission of a s54 notice is where the works meet the criteria that require a three-month notice period prior to the works *and* have not been registered on the SWR. This may or may not become apparent when works commence.

For example, a works may have had a s55 notice submitted but in accordance with the type and duration of the works required a three month advance notice. This would be classed a non-submission of a s54 notice.

In the case where works have commenced without a notice at all, if the works meet the criteria that they require a three-month notice then potentially two offences may arise under s54 and s55.

Required correct information not submitted in accordance with section 54

By not submitting the required correct information on the s54 notice, an offence may not

be apparent until the works have commenced. Street authorities should note that the non-submission of a s54 notice might not become apparent for almost 3 months, by which time the 91-day deadline for giving a FPN would have expired

Section 55(5): Notice of Starting Date of Works

The Notices that are affected by s55(5)

- Major Works – 10 days prior to commencement
- Standard Works – 10 days prior to commencement
- Minor Works with Excavation – 3 days prior to commencement

The prescribed notice information

The information required to be submitted on the s55(5) notice as per the regulations and as described under s54 above

Potential Offences under Section 55(5)

The offence under s55 is where works have actually started on site without a valid notice in place. A FPN can only be given once the works have commenced. In this case the street authority may need to provide evidence that the works did actually commence on site along with details of the notice non-compliance.

Section 55(5) notice not submitted

The offence of non-submission of a s55(5) notice is where the works which require a s55(5) notice have commenced, *and* have not been registered on the SWR. It will not be possible in such cases to rely on information contained in the register but must be evidenced by observation of the works.

Required correct information not submitted in accordance with section 55(5)

Although a s55(5) notice may have been served on time, by not submitting the required correct information on that notice, an offence does not arise until the works have commenced. Under such circumstances, a street authority may consider this a FPN offence.

Commencing works before the required notice period has lapsed without the required consent

If works have commenced before the required notice period has lapsed without the required consent, a street authority may consider this a FPN offence.

An early start request must be approved prior to commencement of works on site. Starting works without such approval may be considered as working without a valid notice. A street authority may consider this a FPN offence.

Section 55(5) notice submitted after expiration of the validity period of the section 54 notice

There is a requirement to serve a s55 notice 15 days prior to the estimated start date included on the s54 notice. Should this not occur, it could be considered as not submitting the notice in a timely manner and a street authority may consider this a FPN offence.

Works Commencing after the Expiration of the Validity Period

This could be considered as working without a valid notice. A street authority may consider this a FPN offence.

Section 55(9): Notice of Cancellation of Works

The prescribed notice information

The information required to be submitted on the s55(8) notice is as per the regulations.

Potential Offences under Section 55(9)

Section 55(8) notice not submitted

The non-submission of a s55(8) notice is where the deadline for commencement of the works has expired and no works have commenced, or the deadline for submission of a s55 notice following a s54 has also expired. A street authority may consider this a FPN offence. It should be noted that the requirement is to submit a cancellation notice (s55(8)) within two days beginning with the date on which the notice ceased to have effect

Required correct information not submitted in accordance with section 55(8)

Although a s55(8) notice may have been served on time, by not submitting the required information on that notice, a street authority may consider this a FPN offence. It should be noted that it is extremely unlikely that incorrect information will be submitted on this notice as it is merely a cancellation of an existing notice although if information was incorrect on the original notice it could have been repeated if not previously corrected.

Section 57: Notice of Emergency Works

Under s57, the following Notices are affected, as stated under the regulations: -

- Immediate Works (both non-traffic sensitive streets and traffic sensitive streets) – 2 hours after works commence.

The prescribed notice information

The information required to be submitted on the s57 notice as per the regulations is as described under s54 above with the addition of the following: -

- Actual start date
- Clarification of intention or the fact the works have commenced

It should also be noted that the expected completion date is only required 'as soon as practical' after works begin, and not necessarily within 2 hours of work commencement.

Potential Offences Under Section 57

Not submitting the required notice within the prescribed timescale

Under the s57 provision, this Notice can be submitted onto the SWR retrospectively. The prescribed timescale is for not more than 2-hours after works have commenced. Where

the 2-hour deadline lands after the transition from one working day to another, the notice has to be submitted by 10am on the next working day. Please note that if works commence before 2.30 p.m. on a working day, then the notice must be served on that same working day. Should a works promoter fail to meet these prescribed timescales, a street authority may consider this a FPN offence.

Not submitting the correct required information in accordance with Section 57

The correct required information for a s57 notice is the same as a s55 notice with the exception that it must state that works are about to start or have already started on site. Should a works promoter fail to submit the correct required information, a street authority may consider this a FPN offence.

Section 70: Duty of undertaker to reinstate

The notices that are affected under section 70

The s70(3) notice is required to be given within 10 days of completion of the works, stating whether the reinstatement is interim or permanent and to provide details of the reinstatement.

The prescribed notice information

The information required to be submitted on the s70 notice as per the regulations is as follows: -

- Relevant reference number
- NGR (either one in the centre of small excavations or one at each end of trenches)
- The dimensions and description of each and every reinstatement
- The date the site was reinstated (start date of guarantee period)
- Construction method for all reinstatements
- Depth of reinstatement

Potential Offences Under Section 70

Not submitting the correct notice within the prescribed timescale

Under s70 provision, the notice must be submitted with 10 days of completion of the reinstatement on site. By not submitting a notice within the prescribed timescales, a street authority may consider this a FPN offence.

Not submitting the correct required information in accordance with section 70

Should a works promoter fail to submit the correct required information, a street authority may consider this a FPN offence.

Section 74: Charge for Occupation of the Highway where Works Unreasonably Prolonged

Under Section 74, the following Notices are affected, as stated under the regulations: -

- Major Works
- Standard Works

- Minor Works
- Immediate Works (other than the actual start date notice)

The prescribed notice information

The following information is required to be submitted on the particular s74 notice as per the regulations in addition to the information requirements for s54 stated previously: -

- **Actual start of Works.** (Please note that this notice is not required for s57 works as that notice can be submitted up to 2 hours after works have commenced, or s55 urgent works)
- **Revised Duration Estimate.** Revised date of completion requested. Must be submitted before the original end date of the works
- **Works Clear.** Date interim reinstatement complete and all spoil and traffic management removed from site. Must be submitted by the end of the working day following the one in which the works were clear.
- **Works Closed.** Date permanent reinstatement complete and all spoil and traffic management removed from site. Must be submitted by the end of the working day following the one in which the works were closed.

Potential Offences Under Section 74

Not submitting the required notice within the prescribed timescale

Under the s74 provisions the following notices must be submitted as detailed below:

- **Actual start of Works:** Within the validity period of the original notice and must be received no later than the end of the next working day after the day on which the works started
- **Revised Duration Estimate.** Before the original end date of the works
- **Works Clear.** By the end of the working day following the one in which the works were clear.
- **Works Closed.** By the end of the working day following the one in which the works were closed.

Should a works promoter fail to submit the correct required information within the prescribed timescales, a street authority may consider this a FPN offence. Please note that if the works are completed after 4.30 p.m., the actual completion is the next working day.

Not submitting the correct required information in accordance with section 74

The correct required information for a s74 notice is dependent on the type of notice.

Should a works promoter fail to submit the correct required information, a street authority may consider this a FPN offence.

DRAFT

Harrow Council
Civic Centre,
PO Box 39
Station Road,
Harrow HA1 2XA

nrswa@harrow.gov.uk

Team Leader, Network Management: Ian Slaney
Traffic Manager: David Eaglesham