



A permit scheme for the South East - Have your say

South East Common Permit Scheme for Road Works and Street Works

Part 3 of the Traffic Management Act 2004 and The Traffic Management Permit Scheme (England) Regulations 2007 gave local authorities powers to produce and operate a permit scheme to improve the management of works in the street undertaken by highway authorities and statutory undertakers. East Sussex County Council and Surrey County Council are working together to exercise these powers and introduce a system of permits for street works and road works

The scheme we would like to introduce is a “Common” Permit Scheme whereby authorities are able individually to adopt the same set of rules. The scheme will apply to all adopted roads throughout East Sussex and Surrey, the specified area for the purposes of the regulations. Motorways and Trunk Roads are not included in this scheme as they are the responsibility of the Highways Agency.

Before the scheme can be introduced East Sussex and Surrey County Council need to seek the views of those who will be affected to ensure it reflects necessary guidance and regulations as well as suiting the needs of both counties. We recognise that there are some stakeholders who operate in both East Sussex and Surrey and as this is a common scheme we are asking everyone to comment via this joint survey.

Before you answer the questions that follow please read the information about the scheme that is available on the East Sussex County Council website and the Surrey County Council website.

Please type your answer in this area which will expand to accommodate your answer. Where there is more than one answer option please type “X” in the relevant answer box.

Please return your completed questionnaire by 5pm on 20 February 2013 to tmaconsultations@halcrow.com

Part 1 – Your comments

Q1: Do you consider that the Permit Scheme is suited to the needs of East Sussex and Surrey?

No

If no, please explain why not.

NJUG believes that better and more consistent use of the myriad of existing legislation and voluntary measures is able to deliver the same result at less cost. NJUG and its members are keen to work with East Sussex County Council and Surrey County Council to utilise the enhanced NRSWA noticing and other existing powers under NRSWA, as well as voluntary measures such as the measures included within the HAUC(UK) Code of Conduct, which encourage greater co-ordination, co-operation, communication and compliance. NJUG believes that this should be fully explored before entering into the development of a Permit Scheme. .

NJUG encourages the sharing of major utility and highway planned works up to two years in advance, which enables authorities to co-ordinate works more effectively and utilities to flex their works where appropriate to enable joint or sequential occupation, thereby reducing overall duration of works.

Equally, authorities have other measures with which to manage utility street works, including recently increased S74 overstay charges; fixed penalties; S58 preventing works after major road resurfacing works, although NJUG's strong preference is for authorities and utilities to work together to plan the works to ensure accurate noticing and no / minimal works overrunning.

Given the costs to both utilities and councils' own highways teams, NJUG would like to ask for sight of any analysis East Sussex County Council has undertaken in assessing the value of introducing a permit scheme, given the level of major / strategic routes, particularly as the major strategic roads running through the County are maintained by the Highways Agency.

NJUG would also like to ask whether the proposed Permit Scheme has taken on board the recently published Permits Guidance from the Minister. This confirms that future schemes should "focus on busy and traffic sensitive streets" only.

<https://www.gov.uk/government/publications/traffic-management-act-2004-additional-guidance-for-new-permit-schemes>

Q2: Do you think the Permit Scheme reflects the requirements of the Statutory Guidance for Permits as found at:

<http://webarchive.nationalarchives.gov.uk/20101007114818/http://www.dft.gov.uk/pgr/roads/network/local/streetworks/pdfstatutoryguidance.pdf>

No

If you have answered "No" please explain in what areas the Permit Scheme does not reflect the requirements the statutory guidance:

The Guidance regarding Permit Schemes from the Department for Transport (DfT) has changed since the proposed South East scheme was published for Consultation, and NJUG is not sure that the proposed scheme accurately reflects these new Guidelines. It appears that the proposed scheme will entail utilities paying a permit fee when working on a traffic-sensitive Cat 3 or 4 street outside of traffic-sensitive times. NJUG believes that this does not comply with the new DfT Guidelines.

Q3: Do you think the Permit Scheme reflects the requirements of the Code of Practice for Permits as found at:

<http://webarchive.nationalarchives.gov.uk/20100202144121/http://www.dft.gov.uk/pgr/roads/network/local/streetworks/cop/pdfpermitscop.pdf>

No

If you have answered “No” please explain in what areas the Permit Scheme does not reflect the requirements of Code of Practice for Permits?

Appendix F details the Standard Conditions of the South East Permit Scheme, and Standard Conditions 12 and 13 relate to the HAUC(UK) Safety at Street works Code of Practice (CoP). If contravention of these standard conditions occurs, then the promoter could be liable for a Fixed Penalty Notice for breach of Permit Conditions.

NJUG believes that an FPN should only be levied as per the Fixed Penalty Notice Regulations and not for a breach of the Safety at Street Works CoP and therefore S65 NRSWA. S65 of NRSWA is not an offence under the FPN regulations, which lists seven offences only. NJUG therefore believes that the CoP for Permits is being breached. Further examples are also detailed in response to Q9 below.

Q4: Do you think the Permit Scheme accurately reflects the requirements of The Traffic Management Permit Scheme (England) Regulations 2007? As found at:

http://www.legislation.gov.uk/ukxi/2007/3372/pdfs/ukxi_20073372_en.pdf

Yes

If you have answered “No” please explain in what areas the Permit Scheme does not reflect the requirements the statutory guidance:

Q5: Do you understand what conditions may be applied in granting a permit.

Yes

NJUG understands the conditions of the Permit Scheme as per Appendix F, but does not agree with them (as per Q3 above).

Q6: Are the penalties for not correctly applying for a permit clearly identified?

Yes

If you have answered “No” please explain your reasons:

Q7: Are the penalties for not abiding by permit conditions clearly identified.

Yes

As per 11.7.2.2 and 3, NJUG agrees with this positive clause in the draft scheme, which states that corrective action at the Permit Authority’s discretion will be allowed (e.g. error correction as opposed to automatically giving an FPN).

If you have answered “No” please explain your reasons:

Q8: Do you think that the monitoring proposed for the scheme is adequate?

Yes

However, NJUG suggests KPI No. 4 be reworded. NJUG assumes this refers to Permit Authority duration challenges?

If you have answered “No” please explain your reasons:

Q9: Are there any aspects of the Permit Scheme which require further clarification?

Yes

If you have answered “Yes” please explain your reasons:

2.1.2.3 of the Scheme document states that the two councils have on average 100,000 road openings per annum. However, this figure does not correspond to the numbers detailed in the Permit Fee Matrixes, which add up to 62,126 estimated number of permits. **NJUG seeks clarity regarding this discrepancy.**

2.2.3.4 states that a fee will not be levied on non traffic-sensitive category 3 and 4 roads. **NJUG seeks clarification on work that takes place on traffic-sensitive category 3 or 4 roads fully outside of traffic sensitive times - will a Permit fee be charged in these cases, or not?**

The Kent Permit Scheme does not charge under these circumstances and NJUG strongly suggests that the South East Scheme follows this example as a way of incentivising all works promoters to consider working outside traffic-sensitive times where safe and appropriate to do so.

3.1.9 - The definitions of main and minor roads are different to the definitions in the statutory guidance. NJUG suggests that Category 3 and 4 traffic-sensitive streets at non traffic-sensitive times should not be classified as main roads.

4.1.1.4 - 'Although the Permit Scheme applies to all registerable activities on both main and minor roads, the draft scheme states that the Permit Authority will not levy a fee for permits granted for those activities which are less likely to have significant impact on the Authority's Road Network'.

Whilst NJUG welcomes this statement, NJUG believes this to be in contradiction with Appendix D & E, which suggests that standard, minor & immediate activities will incur a fee, even if works are carried out during non traffic-sensitive times (i.e. at night). If works are carried out at night it is likely that this will result in less disruption and therefore not charging a permit fee for such works will act as an incentive to move works to outside traffic-sensitive times.

4.9.4.3 – States that 'Promoters applying for permits for immediate activities should do so only once they have begun excavation'.

NJUG believes this to be in contravention of the Permits CoP (9.2.4) which states 'Where immediate activities are identified and undertaken outside the normal working day the application should be made within two hours of the start of the next working day, i.e. by 10:00'. **We therefore suggest this wording is inserted to replace the current wording.**

4.9.4.3 also contradicts 3.2.6 of the South East Permit Scheme, which confirms the Permit is required within 2 hours of the next working day. **NJUG recommends that there is a consistency of approach and wording and asks that these inconsistencies are corrected.**

4.10.3 – States that 'If an activity promoter requests an early start after the initial permit has previously been issued, and this is agreed by the Permit Authority, then there will be a charge for the associated permit variation'. **This is in contravention of the Permits CoP (10.15) which recommends no variation charge and we therefore request that the wording is amended.**

5.3.1 The Permit Authority intends to respond to all permit applications and PAA applications within the timescales.....to discuss possible variations.... NJUG has concerns that a comment coming back or a phone call could result in a permit fee. **NJUG believes that there should only be one Permit fee once the application is approved, and that the scheme follows the existing Permits CoP and new Guidelines.**

5.9.11 – States that 'It will be a condition of all permits that the promoter must inform the Permit Authority, and confirm via EToN, where a permit is no longer required, before 10am on the day before the permit start date, or, in the case of permits on minor roads, no later than 10 am on the day before the end of the starting window'. **NJUG believes this to be in contravention of 12.4.2. of the Permits CoP, and is not a condition allowed in the permit regulations, and should therefore be removed.**

6.2.3 - Illegitimate Phasing of Activities – **NJUG suggests that the reason for refusing the duration must be reasonable and be based on evidence that any reduced duration is achievable and will not place undue pressure on operatives which might have safety or operational implications, and must be subject to the appeals procedure.**

6.4.1.2. – NJUG believes that this section is contrary to the Permits COP (see chapters 12.3.2 and 12.4.1). It is for the Permit Authority to change the dates unless the promoter agrees otherwise because it is more appropriate.

6.4.1.4 - Failure to comply with conditions - Regulation 10.4 is applicable where it appears a breach has occurred, NOT where a Permit Authority just deems it appropriate. If the Permit Authority considers that a promoter is failing to comply with the terms or conditions of a permit imposed under Permit Regulation 10 or 13, it will invoke the powers in Permit Regulation 10(4) which are incorporated into the Permit Scheme.

7.3 – States that ‘The applicant will be liable for all actions, costs, claims, demands, charges and expense arising out of any activity covered by Permit Scheme, including those which may arise out of, or be incidental to, the execution of the works’. This implies that all actions and cost expenses incurred by the Permit Authority will be counter charged to the works promoter. NJUG would like to ask under what powers and legislation is this being proposed? This is not included in Chapter 13 of the Permits CoP and indeed the Government confirmed during the passage of the Traffic Management Act 2004 through Parliament, that the permit fee will be calculated using only the additional cost to a permit authority of managing the utility street works element of a scheme i.e. no costs incurred by the permit authority in managing its own highway works may be charged to utilities through a permit fee or any other mechanism.

9.3.2 – 5th bullet point – States that ‘where the Permit Authority has to revoke a permit through no fault of the promoter there will be no charge for a replacement application received within 1 month of the revocation’. NJUG suggests the one month period be changed to ‘agreed timescales’ (if this is allowable under 12.4.1 Permits CoP) as it may be in the Permit Authority’s interest to agree for the works to take place at a later date longer than a month, in order to potentially co-ordinate with other works or avoid other planned works or events which are planned to follow on, and if undertaken together might cause increased disruption.

Appendix A –Definition of Main Roads – The definition included is different than the statutory Guidance for permits, whereby Category 3 & 4 roads should not be main roads at non traffic-sensitive times.

Appendix F – Conditions 4, 5 and 9 do not relate to 4.9.7 in the South East Scheme (4.9.7 relates to technique of excavation). Condition 5 - There is no power in S10 of the Permit regulations to make this a condition. NJUG believes this condition to be unreasonable as the promoter would be subject to a FPN by the actions/failure of a 3rd party.

NJUG suggests that this should remain only as a requirement of the SEHAUC Portable Traffic Signal process only. 11.4.1 of the Permits COP backs this up by stating that in setting conditions, permit authorities must act reasonably and take account of how reasonable it is for the promoter to comply.

Condition 11 – NJUG believes that the Permit Regulations do not support this condition (S55 NRSWA has not been applied). In addition, it may not be possible in all cases to notify the previous day, as works promoters may not know if the activity cannot begin until arrival on site.

Condition 12 – This does not relate to 5.9.1 of the scheme – **and NJUG seeks clarification. FPNs cannot be given for s65 infringements as this is beyond the scope of FPN regulations. NJUG does not believe condition 12 to be a valid condition within the Permits Code of Practice and urges its removal.**

Q10: Do you have any suggestions for improving the Permit Scheme?

Yes

If you have answered “Yes” please explain your reasons:

2.2.3.4 – NJUG strongly suggests that the scheme must have no permit fee for working outside of traffic-sensitive times in traffic-sensitive category 3 & 4 roads. This will incentivise works promoters to work outside traffic-sensitive times,

NJUG is also concerned that local authorities are implementing permit schemes across the country in differing ways, which is already increasing costs, reducing productivity and leading to workers inadvertently non-complying e.g. conditions increasing the time road works take and reducing productivity by in excess of 30% in certain instances.

Whilst NJUG firmly believes that East Sussex and Surrey County Councils can achieve all they require through implementing existing noticing and other NRSWA 1991 provisions and utilising the existing voluntary schemes at much less cost, if the councils continue to develop a permit scheme, we urge as much alignment as possible with the existing Kent County Council scheme, in order to minimise inconsistency, and avoid:

- Inadvertent non-compliance arising from differing approaches in neighbouring councils
- Even further increased costs through variances requiring additional training, manual workarounds and different operational approaches.
- Widely varying conditions, which have significant impacts on operational efficiency and administration. .

3.1.9 – Main and Minor Roads – **NJUG would like to ask whether the current proposed scheme (version. 6) is going to be revised in line with new ministerial guidance and if so when a further consultation will take place?**

Working outside of traffic-sensitive times in traffic-sensitive category 3 & 4 streets needs to be incentivised as per our comment for 2.2.3.4 above. For example category 3 & 4 roads on Hastings seafront – **NJUG strongly suggests that the scheme should be designed to incentivise promoters to carry out works outside of traffic-sensitive times or outside of peak holiday periods and so therefore no permit fee should apply for those times.**

Q11: Do you have any other comments on the Permit Scheme?(If your comments relate to Permit Fees or the Cost Benefit Analysis summary, please could you state which authority you are commenting about).

4.1.1.3 of the scheme consultation document states ‘The intention is to better control activities to minimise disruption’. NJUG would like to point out that utilities are already incentivised to work as efficiently as possible, through either their periodic regulatory settlements or through customer pressures. NJUG does not believe that a ‘Common’

Scheme in East Sussex & Surrey will necessarily substantially reduce disruption, congestion or pollution at all. It will also not reduce the number of street works that take place as works are only undertaken for four main reasons – safety, security of supply, to connect new customers or enhance existing customers' suppliers, or to divert apparatus to facilitate major transport or urban regeneration projects. The gas sector has a major mains replacement programme required by the Health and Safety Executive; the water sector has a major mains replacement programme to deliver Environment Agency water quality and Ofwat water leakage requirements; the electricity sector is about to embark on similar cable replacement programmes as much of the electricity distribution network comes to the end of its asset life; and the communications sector is embarking on the installation of superfast broadband. All of this means that the volume of street works is not going to reduce for the foreseeable future, and therefore it is imperative that councils and utilities work closely together to plan works to facilitate joint or sequential occupation wherever safe and practical to do so, in order to reduce the unfortunate disruption that sometimes arises, and the overall duration of works.

Essential utility and authority works will still have to take place whether a permit scheme is introduced or not.

Efficiently incurred permit scheme costs will be passed on to customers, as they have been / will be deemed by regulators as being an allowable cost. NJUG therefore asserts that the increased costs to customers and increased customer complaints need to be included as part of the overall cost benefit analysis of the proposed scheme.

Similar to the implementation of other permit schemes, **NJUG suggests that the 'common' permit scheme has a lead in trial of at least 3 months before go live**, with no permit fees chargeable during this period. This will help to iron out any system & operational issues and ensure common understanding before fees are charged.

East Sussex Permit Scheme – Consultation Summary Document - NJUG asks for sight of the detailed breakdown of utility costs that has been included as we have concerns that the figures may be inaccurate. According to the document, it indicates that utilities will incur £1,198,305 annual expenditure, which includes a permit fee total of £540,105. NJUG would like clarification as to a) how many works that figure has been based on b) where the remaining utility expenditure of £658,200 will be coming from? c) whether any allowance has been made for the cost of avoiding permit fees i.e. if to avoid a permit fee a works promoter decides to undertake the works out of hours, then there is an average 25% uplift in labour costs as well potential additional costs for securing materials availability on a 24 hour basis.

Part 2 - Information about you

Q12 Are you responding as an individual or on behalf of an organisation?

Organisation - trade association – NJUG is the only UK trade association representing utilities and their contractors solely on street works matters. Our focus is on driving up standards of street works and representing the industry in constructive discussions with national and local government and other key stakeholders on street works matters.

Q12a Which of these best describes your company or organisation?

Trade Association

Q13a Your name

Les Guest

Q13b Company Name or Organisation

NJUG (National Joint Utilities Group Ltd.)

Q13b Your position in the organisation

Chief Executive

Q14 your address

Address 1 1 Castle Lane
Address 2 Arrow Drive, Off Battle Road
Town London
County London
Postcode SW1E 6DR

Q15 Your email info@njug.org.uk

Q16 If you are responding on behalf of an organisation or interest group how many members do you have?

38 utilities and 17 contractors

Q17 How did you obtain the views of your members?

Comments requested from, and this response circulated to, all members.

Q18 If you would like your response or personal details to be treated confidentially please explain why.

N/A

Thank you for taking the time to give us your views, your feedback is important to us.