

## **Information for Private Undertakers relating to Fixed Penalty Notices and NRSWA Section 74 charges**

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 can 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. These 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 and 20 the FPN charge is £500 unless paid within 30 days, this reduces to £300. The charge will increase to £120 if payment has not been made within 29 calendar days. 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 the next working day from commencement of the works.

All works, including immediate, require a works stop notice which must be sent no later than the next working day that works have been completed.

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:

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

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