
WELSH STATUTORY INSTRUMENTS

2009 No. 1267 (W.114)

HIGHWAYS, WALES

**The Traffic Management Permit
Scheme (Wales) Regulations 2009**

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| <i>Made</i> | - - - - | <i>19 May 2009</i> |
| <i>Laid before the National Assembly for Wales</i> | - - | <i>21 April 2009</i> |
| <i>Coming into force</i> | - - | <i>1 June 2009</i> |

The Welsh Ministers in exercise of the powers conferred upon the National Assembly for Wales by sections 37, 39(2) and 39(4) of the Traffic Management Act 2004⁽¹⁾ and now vested in them⁽²⁾, make the following Regulations:

PART 1

Introduction

Title, commencement, and application

1. The title of these Regulations is the Traffic Management Permit Scheme (Wales) Regulations 2009, they apply in relation to Wales and come into force on 1 June 2009.

Interpretation

2.—(1) In these Regulations —

“the 1991 Act” (“*Deddf 1991*”) means the New Roads and Street Works Act 1991⁽³⁾;

“the 2004 Act” (“*Deddf 2004*”) means the Traffic Management Act 2004;

except where the context otherwise requires, “apparatus” (“*offer*”) includes a sewer, drain or tunnel as well as any structure for the lodging therein of apparatus or for gaining access to apparatus;

(1) 2004 c. 18.

(2) The powers of the National Assembly for Wales under the Traffic Management Act 2004 were transferred to the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (2006 c. 32).

(3) 1991 c. 22.

“duration” (“*cyfnod amser*” a “*parhad*”) means a continuous period of time and includes a period of time capable of being assessed by reference to the provision of a start time and an end time;

“electronic communication” (“*cyfathrebiad electronig*”) has the meaning given in section 15(1) of the Electronic Communications Act 2000 (general interpretation)⁽⁴⁾;

“emergency services” (“*gwasanaethau brys*”) include —

- (a) police, fire, rescue and ambulance services; and
- (b) Her Majesty’s Coastguard;

“local authority” (“*awdurdod lleol*”) means a local county or county borough council in Wales;

“permit” (“*trwydded*”) means an authorisation from the Permit Authority which permits certain specified works to be carried out on a single specified street for a specified duration;

“Permit Authority” (“*Awdurdod Trwyddedau*”), in relation to a permit scheme, means the relevant local highway authority or authorities which have submitted, or intend to submit, that permit scheme to the Welsh Ministers under section 33(1) or (2) of the 2004 Act (preparation of permit schemes);

“permit condition” (“*amod trwydded*”) means a condition attached to a permit by virtue of provision made in a permit scheme under regulation 10 or a condition specified in a permit scheme under regulation 13;

“permit works” (“*gwaith trwydded*”) means works authorised by a permit;

“phase” (“*is-gyfnod*”), in relation to specified works, means a period of uninterrupted occupation of the street during which part of those works will be carried out;

“provisional advance authorisation” (“*blaenawdurdodiad dros dro*”) means an indication of the likely future issue by the Permit Authority of a permit for certain proposed works;

“relevant authority” (“*awdurdod perthnasol*”) has the same meaning as in section 49(6) of the 1991 Act;

“specified area” (“*ardal benodedig*”) has the meaning given in regulation 7;

“specified streets” (“*strydoedd penodedig*”) has the meaning given in regulation 8;

“specified works” (“*gwaith penodedig*”) has the meaning given in regulation 6;

“statutory undertaker” (“*ymgymerwr statudol*”) means a person entitled by virtue of a statutory right to carry out street works;

“street authority” (“*awdurdod strydoedd*”) has the meaning given in section 49(1) of the 1991 Act (definition of the street authority and other relevant authorities);

“working day” (“*diwrnod gwaith*”) means a day other than a Saturday, Sunday, Christmas Day, Good Friday or any day which, under the Banking and Financial Dealings Act 1971⁽⁵⁾, is a bank holiday in England and Wales; and

“works for road purposes” (“*gwaith at ddibenion ffyrdd*”) has the meaning given in section 86(2) of the 1991 Act (highway authorities, highways and related matters).

(2) The offences set out in regulations 19 and 20 are fixed penalty offences for the purposes of Part 5 of these Regulations.

(4) 2000 c. 7. Section 15(1) was amended by the Communications Act 2003 (c. 21), section 406(1) and Schedule 17, paragraph 158.

(5) 1971 c. 80.

PART 2

Application for scheme

Consultation for new permit schemes

3.—(1) Prior to submitting a permit scheme to the Welsh Ministers under section 33 of the 2004 Act, the Permit Authority must consult —

- (a) every person who carries out works in the proposed specified area from time to time, to the extent the Permit Authority is aware of them doing so;
- (b) every local authority other than the Permit Authority in whose area is situated any street to which the proposed permit scheme relates;
- (c) the emergency services which operate in the proposed specified area;
- (d) the Welsh Ministers;

and such other persons as the Permit Authority considers appropriate.

(2) If, before the day on which these Regulations come into force, the Permit Authority has undertaken any consultation which, had it been undertaken after that day, would to any extent have satisfied the requirements in paragraph (1), those requirements must to that extent be taken to have been satisfied.

Procedural requirements for submitting new permit schemes

4. When submitting a permit scheme under section 33(1) or (2) of the 2004 Act, the Permit Authority must provide the Welsh Ministers with the following information —

- (a) the name of every person who is a highway authority for one or more of the specified streets;
- (b) what the objectives of the Permit Authority are for that permit scheme;
- (c) how the Permit Authority proposes to ensure that it will comply with the obligation set out in regulation 40;
- (d) how and when the Permit Authority proposes to evaluate that permit scheme so as to measure whether the objectives for it have been met;
- (e) the costs and benefits (whether or not financial) which the Permit Authority anticipates will result from that permit scheme;
- (f) the evidence considered by the Permit Authority when it decided to include any provisions in the permit scheme as to the fees which may be charged, and the reasons for its decision;
- (g) the date on or after which the Permit Authority proposes that the permit scheme should come into effect;
- (h) details of any transitional arrangements which the Permit Authority would wish to apply in relation to the permit scheme coming into effect; and
- (i) a summary of the responses received to the consultation undertaken under regulation 3 and of the changes made to the permit scheme following that consultation.

Varying and revoking permit schemes at the Permit Authority's request

5. Before asking the Welsh Ministers to vary or revoke a permit scheme the Permit Authority must consult the persons referred to in regulation 3(1).

PART 3

Permit Scheme Content

Specified works

6.—(1) A permit scheme must specify the works (or types of works) which that permit scheme is designed to control (which must be the “specified works” for the purposes of that permit scheme).

(2) The specified works described in a permit scheme will comprise both street works and works for road purposes.

(3) Specified works for a permit scheme must not include works executed in a street pursuant to a street works licence issued under section 50 of the 1991 Act (street works licences).

Specified area

7. A permit scheme must specify the area within which the carrying out of specified works is to be controlled (which must be the “specified area” for the purposes of that permit scheme).

Specified streets

8.—(1) Subject to the following paragraphs of this regulation, a permit scheme must specify the streets (or types of streets) within its specified area to which controls on the carrying out of specified works are to apply (which must be the “specified streets” for the purposes of that permit scheme).

(2) Subject to paragraph (3), a permit scheme may not specify any streets which are not maintainable highways as being streets to which controls on the carrying out of specified works are to apply.

(3) A permit scheme may specify a street which is not a maintainable highway as being a street to which controls on specified works are to apply if —

- (a) the Permit Authority anticipates that the street will become a maintainable highway; and
- (b) the permit scheme provides that the controls on specified works apply only in relation to works in that street which are carried out after the street has become a maintainable highway.

(4) A permit scheme may specify streets as being streets to which controls on the carrying out of specified works are to apply notwithstanding that the permit authority is not the highway authority for those streets.

Permits

9.—(1) Subject to paragraph (2), a permit scheme must include provision requiring a permit to be obtained from the Permit Authority before specified works are carried out in a specified street.

(2) A permit scheme must specify persons (or types of persons) to whom and circumstances (or types of circumstances) in which the requirement in paragraph (1) does not apply.

(3) A permit scheme must specify the information which will accompany a permit application, and may specify the manner in which, and the time within which, such applications should be submitted.

(4) A permit scheme must require each application for a permit to be limited to one street.

(5) A permit scheme must require each application for a permit or for a variation of a permit to provide an estimate of the likely duration of the works which are the subject of that application.

(6) A permit scheme must provide for each permit to specify the duration within which the specified works on a specified street are by that permit authorised.

(7) A permit scheme may provide for different classes of permit to be required in relation to different circumstances.

(8) A permit scheme may provide that where it is proposed that the relevant specified works are to be carried out in more than one phase, a separate permit must be obtained in respect of each phase.

(9) A permit scheme must include provision requiring a copy of each application for a permit to be provided by the applicant upon request to any relevant authority and to any other person having apparatus in the street to which the application relates.

Conditions attached to permits

10.—(1) A permit scheme must include provision for the Permit Authority to attach conditions to permits, and must specify the types of condition which the Permit Authority may attach.

(2) Without prejudice to the generality of paragraph (1), the types of condition which the Permit Authority may attach to permits under that paragraph include conditions relating to —

- (a) days on which permit works may not be carried out;
- (b) times of day during which permit works may not be carried out;
- (c) the area (including areas not forming part of the street) which may be occupied in connection with the permit works;
- (d) the prohibition or restriction of traffic pursuant to orders or notices under section 14 of the Road Traffic Regulation Act 1984 (temporary prohibition or restriction on roads)⁽⁶⁾;
- (e) traffic management arrangements to be made in connection with the permit works (including arrangements for the particular benefit of persons with a disability);
- (f) the manner in which the specified works are to be carried out;
- (g) consultation and publicity in relation to the specified works, including the display of information at the location of those works; and
- (h) notification of progress in relation to the specified works.

(3) The types of condition which the Permit Authority may attach to a permit in respect of permit works to be carried out by or on behalf of a highway authority may also include conditions —

- (a) requiring the highway authority to consult with any person who has apparatus likely to be affected by the permit works; and
- (b) requiring the highway authority to take all reasonable practicable steps to comply with any requirement made by that person which is reasonably necessary for the protection of the apparatus or for securing access to it.

(4) A permit scheme must provide that the Permit Authority may revoke a permit where it appears to the Permit authority that a condition attached to that permit has been breached.

(5) In this regulation, “traffic management arrangements” includes signs, signals, road markings, barriers and other measures which are intended to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians).

Provisional advance authorisations

11.—(1) A permit scheme may include provision requiring a provisional advance authorisation for certain specified works in specified streets to be obtained as part of the application for certain classes of permit.

(6) 1984 c. 27. Section 14 was substituted by the Road Traffic (Temporary Restrictions) Act 1991 (c. 26) section 1 and Schedule 1.

(2) Where a permit scheme includes such provision, it must specify the information which must accompany an application for provisional advance authorisation, and may specify the manner in which such application is submitted and the time within which such applications must be submitted.

(3) Each application for provisional advance authorisation must be limited to one street.

(4) Where a permit scheme requires a provisional advance authorisation to be obtained as part of the application for specified works in specified streets, the Permit Authority must have regard to whether an applicant has obtained such authorisation when deciding whether to issue a permit.

(5) A grant of provisional advance authorisation does not prevent the Permit Authority from deciding not to grant the permit to which that authorisation relates.

(6) A permit scheme must include provision requiring a copy of each application for a provisional advance authorisation to be provided by the applicant upon request made by a relevant authority and to any other person having apparatus in the street to which the application relates.

Permit reference numbers

12. The Permit Authority must allocate a unique reference number to each permit it issues.

Conditions on works to which requirement to obtain permit does not apply

13.—(1) A permit scheme may —

- (a) specify conditions; and
- (b) include provision for the Permit Authority to specify conditions,

which are to apply to specified works which are carried out in specified streets to which, by virtue of provision made in the scheme under regulation 9(2), a requirement in that scheme to obtain a permit before those works are begun to be carried out is disappplied.

(2) Such conditions must be of the types specified in the permit scheme under regulation 10(1) to (3).

(3) Where a permit scheme makes such provision as is permitted by paragraph (1)(b) it must also —

- (a) specify the method by which those undertaking the works are able to identify any conditions applicable to the works before they start, and
- (b) specify how any variations to applicable conditions will be brought to the attention of those undertaking such works.

(4) Such conditions will cease to apply once any required permit is issued.

Criteria to be taken into account by Permit Authority

14.—(1) Where a notice has been issued under section 58(1) of the 1991 Act (restriction of works following substantial road works)(7) in respect of a specified street, and an application for a permit or a provisional advance authorisation is made in respect of works to be carried out during the prescribed period, the Permit Authority must, when considering such application, have regard to —

- (a) whether the applicant received a copy of the notice; and
- (b) whether, within the period specified in the notice for responses to that notice, the applicant notified the Permit Authority (or, if different, the street authority which issued the notice) of the works now proposed.

(7) Section 58(1) was amended by the Traffic Management Act 2004, section 51(1) and (2).

(2) In this regulation, “the prescribed period” means the period specified in regulation 11(2) of the Street Works (Registers, Notices, Directions and Designations) (Wales) (No.2) Regulations 2008(8).

Review, variation and revocation of permits and permit conditions

15.—(1) A permit scheme must include provision for the Permit Authority to have power to vary and revoke permits and permit conditions.

(2) A permit scheme must specify the information which accompanies an application for the variation or revocation of a permit or of permit conditions, and may specify the manner in which and the time within which such application is submitted.

(3) A permit scheme must include a statement of the Permit Authority’s policy as to the circumstances in which it will review, vary or revoke a permit and permit conditions on its own initiative.

Time limits on Permit Authority

16.—(1) A permit scheme must set time limits within which the Permit Authority must respond to applications for permits, provisional advance authorisations, variations of permits and variations to permit conditions.

(2) Different time limits may be set for different cases.

(3) If a Permit authority does not grant or refuse a duly completed application within the applicable time limit, the application will be deemed to have been granted, and any estimate of the likely duration of the works which are the subject of the application for a permit or variation of a permit provided in that application, will be taken to be a reasonable period for the purposes of section 74(1) of the 1991 Act (charge for occupation of the highway where works unreasonably prolonged).

PART 4

Publicity

Notification of permit scheme

17.—(1) Where the Welsh Ministers have made an order under section 34(4) of the 2004 Act (implementation of local highway authority permit schemes) giving effect to a permit scheme, the Permit Authority must notify the persons referred to in regulation 3(1) that such order has been made not less than four weeks before the date on which the scheme is to come into effect.

(2) Where the Welsh Ministers have made an order under section 36 of the 2004 Act (variation and revocation of permit schemes) to vary or revoke a permit scheme, the Permit Authority must notify the persons referred to in regulation 3(1) that such order has been made not less than four weeks before the date on which the variation or revocation commences.

PART 5

Sanctions

Action which may be taken for unauthorised works

18.—(1) Where a person —

- (a) undertakes, without a permit, works for which a permit is required to have been obtained; or
- (b) breaches any condition of a permit;

the Permit Authority may by notice require that person to take such reasonable steps as are specified in the notice, which may include steps to remove the works, to remedy the breach or to minimise or discontinue any obstruction to the street connected with the works.

(2) The notice must specify the works or breach falling within paragraph (1)(a) or (b) to which it relates.

(3) If a statutory undertaker fails to comply with such a notice within such reasonable period as is specified in the notice, the Permit Authority may take the steps specified in the notice and such reasonable steps as it considers appropriate having regard to the works or breach falling within paragraph (1)(a) or (b) to which the notice relates and recover from the statutory undertaker the costs reasonably incurred by it in doing so.

Offence to undertake works without a required permit

19.—(1) It is an offence for a statutory undertaker or a person contracted to act on its behalf to undertake specified works in a specified street in the absence of a permit, except to the extent that a permit scheme provides that this requirement does not apply.

(2) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 5 on the standard scale.

Offence to breach a permit condition

20.—(1) It is an offence for a statutory undertaker or a person contracted to act on his or her behalf to breach a permit condition.

(2) A person guilty of an offence under this regulation is liable on summary conviction to a fine not exceeding level 4 on the standard scale.

Giving fixed penalty notices

21.—(1) An authorised officer of a Permit Authority may, if that officer has reason to believe that a person is committing or has committed an offence under regulation 19(1) or 20(1), give him or her a fixed penalty notice in relation to that offence.

(2) In this Part “fixed penalty notice” means a notice offering a person the opportunity of discharging any liability to conviction for a fixed penalty offence by payment of a penalty.

Time limit for giving fixed penalty notice

22. A fixed penalty notice may not be given more than 91 days after the commission of the offence beginning with the day of its commission.

Form of fixed penalty notice

23.—(1) A fixed penalty notice must be in the form set out in Schedule 1 or in a form to substantially the like effect.

(2) A fixed penalty notice must identify the offence to which it relates and give reasonable particulars of the circumstances alleged to constitute that offence.

(3) A fixed penalty notice must also state —

- (a) the amount of the penalty and the period within which it may be paid;
- (b) the discounted amount payable in accordance with regulation 25 and the period within which it may be paid;
- (c) the person to whom and the address at which payment may be made;
- (d) the method or methods by which payment may be made;
- (e) the person to whom and the address at which any representations relating to the notice may be addressed; and
- (f) the consequences of not making a payment within the period for payment.

(4) The person specified under paragraph (3)(c) must be the permit authority or a person contracted to act on its behalf.

Penalties payable when fixed penalty notice given

24.—(1) Where a fixed penalty notice has been given under regulation 21 in relation to an offence, the penalty payable in order to discharge liability to conviction for that offence is —

- (a) in the case of an offence under regulation 19, £500, and
- (b) in the case of an offence under regulation 20, £120.

(2) The period for payment of the penalty is the period of 36 days beginning with the day on which the notice is given.

(3) The Permit Authority may extend the period for paying the penalty in any particular case if they consider it appropriate to do so.

Discounts for early payment

25.—(1) A discounted amount is payable instead of the amount prescribed under regulation 24(1) if payment is made before the end of the period of 29 days beginning with the day on which the notice is given.

(2) The discounted amount is —

- (a) in a case where regulation 24(1)(a) applies, £300, and
- (b) in a case where regulation 24(1)(b) applies, £80.

(3) If the last day of the period specified in paragraph (1) does not fall on a working day, the period for payment of the discounted amount is extended until the end of the next working day.

Saving from proceedings where fixed penalty notice given

26.—(1) This regulation applies where a person is given a fixed penalty notice in respect of a fixed penalty offence.

(2) No proceedings for the offence may be commenced before the end of the period for payment of the penalty.

(3) No such proceedings may be commenced or continued if payment of the penalty is made before the end of that period or is accepted by the Permit Authority after that time.

(4) Payment of the discounted amount only counts for the purposes of paragraph (3) if it is made before the end of the period for payment of the discounted amount.

(5) In proceedings for the offence, a certificate which—

(a) purports to be signed by or on behalf of the person having financial responsibility for the permit scheme; and

(b) states that payment of an amount specified in the certificate was or was not received by a date so specified,

is evidence of the facts stated.

(6) The person having financial responsibility for the permit scheme is —

(a) where the Permit Authority is a single highway authority, the person having responsibility for the financial affairs of that authority; and

(b) where the Permit Authority is more than one highway authority, the person appointed by the participating authorities as being responsible for financial accounting in relation to the permit scheme.

Withdrawal of fixed penalty notice

27.—(1) If the Permit Authority considers that a fixed penalty notice which has been given ought not to have been given, it must give to the person to whom that notice was given a notice withdrawing the fixed penalty notice.

(2) A notice under paragraph (1) must be in the form set out in Schedule 2 or in a form to substantially the like effect.

(3) Where a notice under paragraph (1) is given the Permit Authority must repay any amount which has been paid by way of penalty in pursuance of the fixed penalty notice.

(4) The Permit Authority must consider any representations made by or on behalf of the recipient of a fixed penalty notice and decide in all the circumstances whether to withdraw the notice.

Application of sums received from fixed penalties

28.—(1) A Permit Authority may deduct from fixed penalties received under these regulations any costs of operating its permit scheme which remain following the application of fee income to those costs under regulation 32.

(2) A Permit Authority must apply the proceeds or net proceeds received from fixed penalties for the purpose of developing or implementing policies for the promotion and encouragement of safe, integrated, efficient and economic transport facilities and services to, from and within the specified area.

PART 6

Fees

Prescribed costs

29. For the purposes of section 37(9) of the 2004 Act (permit regulations) and regulation 32 the prescribed costs in any financial year are that proportion of the total costs incurred by the Permit

Authority in connection with operating a permit scheme in that year attributable to the costs of operating that scheme in relation to statutory undertakers.

Power to charge a fee and discounts

30.—(1) Subject to regulations 31 and 32, a Permit Authority may charge a fee in respect of each of the following —

- (a) the issue of a permit;
- (b) an application for a permit, where the permit scheme requires a provisional advance authorisation to be obtained as part of that application; and
- (c) each occasion on which there is a variation of a permit or the conditions attached to a permit.

(2) In a case where the permit scheme allows for different fees to be paid for different specified works the scheme must set out the range of fees that may be charged and the criteria which are to be taken into account in determining how the fee applicable in an individual case is identified from that range.

(3) A permit scheme must include provision as to the circumstances in which fees may be discounted, and such provision may include —

- (i) the discount applicable in a specific circumstance; or
- (ii) the range of discounts which may be applicable in that circumstance and the criteria which are to be taken into account in determining how the discount applicable in an individual case is identified from that range.

(4) The maximum fee which may be charged in respect of the issue of a permit is £240.

(5) The maximum fee which may be charged in respect of an application for a permit is £105.

(6) The maximum fee which may be charged in respect of each occasion on which there is a variation of a permit or a condition attached to a permit is £45.

Savings from the payment of fees and discounts

31.—(1) Highway authorities will not be liable to pay fees under a permit scheme.

(2) A Permit Authority must not charge a fee in respect of a variation of a permit or of a condition attached to a permit if the variation was not made at the request of the permit holder.

(3) A Permit Authority must not charge a fee in respect of the deemed issue of a permit or a deemed variation of a permit or of the conditions attached to a permit pursuant to regulation 16(3).

(4) Paragraph (5) applies in a case where the Permit Authority is satisfied that applications for two or more permits received within 3 working days of each other, beginning with the day on which the first application is received, are the result of the applicant, or the applicants working together, designing the timing or extent of the programme of the specified works the subject of the applications so as to produce the least impact for users of the specified streets.

(5) In a case where this paragraph applies the Permit Authority shall allow a minimum 30% discount for each of the applications.

Application of sums received as fees

32. A Permit Authority must apply sums paid by way of fees under these Regulations towards those costs of operating its permit scheme which are prescribed costs.

PART 7

Registers

Duty to maintain register

33.—(1) The Permit Authority must create and maintain or cause to be created and maintained a register of permits in respect of any permit scheme submitted by it under section 33 of the 2004 Act that is in effect under section 34(4) of that Act.

(2) The register must contain the following information —

- (a) the name of every specified street within that scheme; and
- (b) whether such streets have been designated by the relevant street authority under section 61, 63 or 64 of the 1991 Act⁽⁹⁾ as protected streets, streets with special engineering difficulties or traffic-sensitive streets;

and such other information in relation to the streets referred to in sub-paragraph (a) as the Permit Authority considers appropriate.

(3) The Permit Authority must cause to be entered in the register the provisions of —

- (a) every permit (consolidated so as to incorporate any variations of the permit);
- (b) every variation of a permit;
- (c) every variation and revocation of permit conditions;
- (d) every provisional advance authorisation;
- (e) every application for a permit;
- (f) every application for a variation of a permit;
- (g) every application for a provisional advance authorisation;
- (h) every refusal to grant a permit;
- (i) every refusal to grant a variation of a permit;
- (j) every refusal to grant a provisional advance authorisation;
- (k) every permit, provisional advance authorisation, variation of a permit and variation to permit conditions deemed to have been granted under regulation 16; and
- (l) every permit revocation;

relating to the permit scheme for which the register is maintained.

(4) The Permit Authority must also cause to be entered in the register —

- (a) every notice and consent given under section 58⁽¹⁰⁾ of the 1991 Act;
- (b) every notice given under regulation 5 of the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (Wales) Regulations 2009⁽¹¹⁾;
- (c) every notice and direction given under Schedule 3A (restriction on works following substantial street works)⁽¹²⁾ to the 1991 Act;

⁽⁹⁾ Section 64 was amended by the Road Traffic Act 1991 (c. 40), section 81 and Schedule 7, paragraph 12 and by the Traffic Management Act 2004, section 52(4).

⁽¹⁰⁾ Section 58 was amended by the Traffic Management Act 2004, sections 40 and 51 and Schedule 1.

⁽¹¹⁾ S.I. 2009/1268 (W.115).

⁽¹²⁾ Schedule 3A was inserted by the Traffic Management Act 2004, section 52(2) and Schedule 4.

- (d) a description and location of activities for all plans and sections and descriptions of works submitted under paragraph 2(2), 3 or 5 of Schedule 4 (streets with special engineering difficulties)(**13**) to the 1991 Act;
- (e) every notice given under Schedule 4 to the 1991 Act;
- (f) every street works licence granted under section 50(1) of the 1991 Act (including details of conditions attached to such a licence and every assignment of the benefit of such a licence);
- (g) every notice given under section 70(3) or (4A) (duty of undertaker to reinstate)(**14**) of the 1991 Act;
- (h) all information given under section 80(2) (duty to inform undertakers of location of apparatus)(**15**) of the 1991 Act; and
- (i) every notice given under regulation 6(3) of the Street Works (Sharing of Costs of Works) (Wales) Regulations 2005(**16**);

relating to a specified street within that permit scheme.

- (5) Two or more Permit Authorities may cause their registers to be combined.

Access to register

34.—(1) The Permit Authority must make the register available for inspection at all reasonable hours and free of charge —

- (a) so far as it relates to restricted information, by any person having authority to execute works of any description in the street, or otherwise appearing to the authority to have a sufficient interest, and
 - (b) so far as it relates to information which is not restricted, by any person.
- (2) For the purposes of paragraph (1), restricted information is —
- (a) information certified by, or with the authorisation of, the Secretary of State as being restricted information for the purpose of safeguarding national security; or
 - (b) information certified by, or with the authorisation of, an undertaker as being restricted information because its disclosure would, or would be likely to, prejudice the commercial interests of that undertaker.

PART 8

Other Enactments

Application of Part

35. This Part applies to the specified streets within a permit scheme to the extent specified in the order made under section 34(4) of the 2004 Act in respect of that permit scheme.

(13) Schedule 4 was amended by the Traffic Management Act 2004, sections 40 and Schedule 1; by the Communications Act 2003, section 406 and Schedule 17 paragraph 108 and Schedule 19 paragraph 1; and by the Water Consolidation (Consequential Provisions) Act 1991 (c. 60), section 2 and Schedule 1 paragraph 57.

(14) Section 70 was amended by the Traffic Management Act 2004, sections 40 and 54(1) to (3).

(15) Section 80 was amended by the Traffic Management Act 2004, sections 40 and Schedule 1. It is prospectively amended by section 47(1) to (6) of that Act.

(16) S.I. 2005/1721 (W.133).

Disapplication of enactments

36. The following provisions of the 1991 Act are disapplied in relation to specified works in specified streets —

- (a) section 53 (the street works register)(**17**);
- (b) section 54 (advance notice of certain works)(**18**);
- (c) section 55 (notice of starting date of works)(**19**);
- (d) section 56 (power to give directions as to timing of street works)(**20**);
- (e) section 57 (notice of emergency works)(**21**); and
- (f) section 66 (avoidance of unnecessary delay or obstruction)(**22**).

Modification of enactments

37.—(1) The following provisions of the 1991 Act are modified as follows in relation to specified works in specified streets.

(2) Section 58 has effect as if —

- (a) in subsection (3)(d) for “given notice under section 54 (advance notice of certain works) of his intention to execute street works” there were substituted “applied for a provisional advance authorisation for street works to be carried out”; and
- (b) subsections (5) to (7A) were omitted.

(3) Section 73A(2)(a) (which, when in force, will allow street authorities to require undertakers to re-surface streets)(**23**) has effect as if for “given notice under section 54 or 55 of, or made a notification under paragraph 2(1)(d) of Schedule 3A in respect of, proposed street works”, there were substituted “submitted an application for a permit or for a provisional advance authorisation in respect of specified works in a specified street”.

(4) Section 74(**24**) has effect as if —

- (a) there were inserted after subsection (2) the following —
 - “(2ZA) For the purpose of the definition of “a reasonable period” in subsection (2), the specification in a permit (including as a result of a variation of the permit) of a period as one during which specified works may be carried out in a specified street —
 - (a) does not constitute agreement to a period by the authority and the undertaker, and
 - (b) is to be disregarded on an arbitration.”; and
- (b) subsections (3) and (4) were omitted.

(5) Section 88(4) (bridges, bridge authorities and related matters)(**25**) has effect as if —

- (a) for “giving notice under section 55 (notice of starting date), or making a notification under paragraph 2(1)(d) of Schedule 3A (notification of proposed works),” there were substituted “submitting an application for a permit or for a provisional advance authorisation”, and

(17) Section 53 is prospectively amended by the Traffic Management Act 2004, section 45.

(18) Section 54 was amended by the Traffic Management Act 2004, sections 40 and 49 and Schedule 1.

(19) Section 55 was amended by the Traffic Management Act 2004, sections 40, 49 and 51 and Schedule 1.

(20) Section 56 was amended by the Traffic Management Act 2004, sections 40 and 43(3) and Schedule 1.

(21) Section 57 was amended by the Traffic Management Act 2004, sections 40 and 52(3) and Schedule 1.

(22) Section 66 was amended by the Traffic Management Act 2004, section 40 and Schedule 1.

(23) Section 73A is prospectively inserted by the Traffic Management Act 2004, section 55(1).

(24) Section 74(2A) was inserted by the Transport Act 2000, section 256.

(25) Section 88(4) was amended by the Traffic Management Act 2004, section 52(6).

- (b) after “to the works”, there were inserted “or undertaking any works which are exempt from the requirement to be authorised by a permit”.
- (6) Section 89(2) (public sewers, sewer authorities and related matters)(**26**) has effect as if —
- (a) for “giving notice under section 55 (notice of starting date), or making a notification under paragraph 2(1)(d) of Schedule 3A (notification of proposed works),” there were substituted “submitting an application for a permit or for a provisional advance authorisation”; and
- (b) after “to the works”, there were inserted “or undertaking any works which are exempt from the requirement to be authorised by a permit”.
- (7) Section 93 (works affecting level crossings or tramways)(**27**) has effect as if —
- (a) in subsection (2), for the words from “give the prescribed notice” to “under subsection (1) of that section”, there were substituted “send a copy of the application for a permit or for a provisional advance authorisation to the relevant transport authority at the same time as he or she sends the application to the Permit Authority”;
- (b) in subsection (5), for the words from “give notice” to “under subsection (2) of that section”, there were substituted “send a copy of the application for a permit or for a provisional advance authorisation to the relevant transport authority at the same time as he or she sends the application to the Permit Authority”;
- (c) there were inserted after subsection (5) the following —
- “(6) An undertaker who fails to comply with subsection (2) or (5) commits an offence and is liable on summary conviction to a fine not exceeding level 4 on the standard scale.
- (7) In proceedings against a person for such an offence it is a defence for him or her to show that—
- (a) the failure was attributable to his or her not knowing the identity or address of a relevant transport authority, and
- (b) his or her ignorance was not due to any negligence on his or her part or to any failure to make inquiries which he or she ought reasonably to have made.”.
- (8) Section 105 (minor definitions) has effect as if there were inserted after subsection (5) the following—
- “(6) An expression used in this Part and in permit regulations within the meaning of section 37 of the Traffic Management Act 2004) has the same meaning in this Part as in those regulations.”.
- (9) Schedule 3A has effect as if —
- (a) For paragraph 1, there were substituted —
- “**1.** This Schedule applies where a Permit Authority receives an application for a permit or for a provisional advance authorisation in respect of specified works in a specified street”;
- (b) in paragraph 2(1)(a) for “the proposed works” there were substituted “the works that are the subject of the application”;
- (c) in paragraph 2(1)(b), for “street works” there were substituted “specified works in the street to which the application relates”;
- (d) in paragraph 2(1)(c) for “highway” there were substituted “street”;
- (e) in paragraph 2(1)(d) —
- (i) for “undertakers” there were substituted “persons”;

(26) Section 89(2) was amended by the Traffic Management Act 2004, section 52(7).

(27) Section 92(2) was amended by the Traffic Management Act 2004, section 49(3).

- (ii) for “street works in that part of the highway” there were substituted “specified works in that part of the street”;
- (iii) for “notify the authority of” there were substituted “apply for a permit or provisional advance authorisation, as applicable, in respect of”;
- (f) in paragraph 2(4) for “highway”, in each place where that word occurs, there were substituted “street”;
- (g) in paragraph 2(4)(d), for the words from “given notice” to “street works” there were substituted “applied for a permit or for a provisional advance authorisation in respect of specified works”;
- (h) sub-paragraphs (5) and (6) of paragraph 2 were omitted;
- (i) paragraph 3 were omitted;
- (j) in paragraph 4(1) the words “and before completion of the works referred to in paragraph 3(1)(a) to (c)” were omitted;
- (k) in paragraph 4(2) for the words from “the execution” to the end there were substituted “the availability of permits in relation to the part of the street specified under paragraph 2(1) (c) for such period as may be specified in the direction”;
- (l) paragraph 4(4), (5) and (7) were omitted;
- (m) in paragraph 4(9) “ceases to have effect by virtue of sub-paragraph (7), or” were omitted; and
- (n) for paragraph 5 there were substituted —
 - “5.—(1) This paragraph applies where —
 - (a) a direction under paragraph 4 has effect; and
 - (b) an application for a permit, or for a provisional advance authorisation, relating to the part of the street to which the direction relates is made after the expiry of the notice period.
 - (2) The Permit Authority must, when considering the application have regard to —
 - (a) whether the application could reasonably have been made during the notice period; and
 - (b) the desirability of ensuring that specified works are not carried out in that street during the period specified in the direction”.

Modification of regulations

38. Paragraph 7(a) of the Schedule to the Street Works (Registers, Notices, Directions and Designations) (Wales) (No.2) Regulations 2008 has effect in relation to specified works on specified streets as if for “given notice under section 54 or section 55 of its intention to execute street” there were substituted “applied for a permit or for a provisional advance application in respect of specified”.

PART 9

Miscellaneous

Service of documents, etc

39.—(1) Subject to paragraph (5), any requirement or power in these Regulations or in a permit scheme to send a document or information other than a fixed penalty notice will be discharged by sending that document or information using electronic communication.

(2) Where a person —

- (a) has provided a Permit Authority with an address for service on him or her of fixed penalty notices by using a particular method for transmitting an electronic communication; and
- (b) has not notified the Permit Authority that the address is withdrawn for that purpose;

a fixed penalty notice shall be given by sending it to him or her at that address by that method, in accordance with the requirements set out in paragraph (4).

(3) Subject to section 98(2) of the 1991 Act, where an electronic communication is used for the purpose of sending a document or information, then, unless the contrary is proved, the document or information will be deemed to be given on the day and at the time recorded by the transmitting apparatus as being the day and time of satisfactory completion of the transmission.

(4) An electronic communication must be —

- (a) capable of being accessed by the person to whom it is sent;
- (b) legible; and
- (c) in a form sufficiently permanent to be used for subsequent reference.

(5) Where it is not possible to use an electronic communication or, in relation to a fixed penalty notice, paragraph (2) does not apply, service may be effected by any of the following means —

- (a) delivery to the person to whom it is to be given;
- (b) leaving it at his or her proper address;
- (c) sending it by first class post to him or her at his or her proper address; or
- (d) such other means as may be agreed between the sender and recipient.

(6) The proper address of any person for the purposes of this regulation is, subject to paragraph (7)

- (a) where such person has provided to the sender an address for service for the purposes of permit schemes, that address;
- (b) otherwise —
 - (i) in the case of a corporation, the registered or principal office of the corporation; or
 - (ii) in any other case, the last known address of such person.

(7) A person may provide different addresses for different notices or different classes of notice.

(8) Where a Permit Authority does not have arrangements for receiving communications at any time outside business hours, any requirement imposed by or under a permit scheme to send a document or information to the Permit Authority by a given day is deemed to have been satisfied if the document or information has been received by the Permit Authority before 10.00 hours on the following working day.

(9) In paragraph (8), “business hours” means the period from 08.00 hours to 16.30 hours on a working day.

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Non-discrimination

40. Without prejudice to the operation of Parts 5 and 6 of these Regulations, a Permit Authority must operate a permit scheme made by it without discrimination between different classes of applicant for permits or for provisional advance authorisations.

19 May 2009

Ieuan Wyn Jones
Minister for the Economy and Transport, one of
the Welsh Ministers

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SCHEDULE 1

Regulation 23

FORM OF FIXED PENALTY NOTICE

| | | |
|--|--|---|
| * | FIXED PENALTY NOTICE [NAME OF PERMIT SCHEME ORDER] THE TRAFFIC MANAGEMENT PERMIT SCHEME (WALES) REGULATIONS 2009 | FIXED PENALTY NOTICE Number: |
| PART A | | |
| Contact Tel No. | Permit Reference No. * | |
| TO: | DATE OF THIS NOTICE: | |
| | dd mm yy | |
| ADDRESS: | | |
| OFFENCE CODE (See Part B) (NB: Only one offence code per fixed penalty notice) : | | |
| | | |
| LOCATION: | | |
| DATE OF OFFENCE | | |
| DETAILS OF OFFENCE : | | |
| <p>1. I am giving you this notice, in accordance with Part 5 of the Traffic Management Permit Scheme (Wales) Regulations 2009, to offer you the opportunity of discharging any liability to conviction for this fixed penalty offence by payment of a penalty.</p> <p>2. This means that no legal proceedings will be commenced for the offence if, subject to paragraph 3, the penalty of [£500] [£120] is paid (See Part B for instructions on methods of payment) within the period of 36 days beginning with the day on which this notice was given. (NB: The permit authority may extend this period in any particular case if they consider it appropriate to do so (See regulation 24(3))).</p> <p>3. Instead of paying the amount referred to in paragraph 2, liability to conviction for the offence may also be discharged if the discounted amount of [£300] [£80] is paid within the period of 29 days beginning with the day on which this notice was given. (NB: If the last day of this period does not fall on a working day, the period for payment of the discounted amount is extended until the end of the next working day (See regulation 25(3))).</p> <p>4. If the discounted amount is not paid within the period set out in paragraph 3, as extended where relevant, liability to conviction for the offence may only be discharged thereafter by payment of the penalty of [£500] [£120] within the period set out in paragraph 2, as extended where considered appropriate. If you then fail to pay the penalty within that period, legal proceedings for the offence may be commenced against you.</p> <p>5. Any representations that you wish to make in relation to this notice may be addressed to at identifying the fixed penalty notice number stated above.</p> | | |
| NAME OF AUTHORISED OFFICER (in block capitals): | | |
| | | |
| DATE : | | |
| | | |

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| PART B | | |
|---|--|---|
| * (* Insert Street Authority name) | <u>INSTRUCTIONS ON METHODS OF PAYMENT</u> | FIXED PENALTY NOTICE Number: |
| <p>ELECTRONICALLY- by the Bankers Automated Clearing Services (BACS). Payment should be made to , Sort Code , Account Number . Payment must be supported by the timely submission of a list of the fixed penalty notice numbers covered by the payment and the amount being paid in relation to each number.</p> | | |
| <p>"ON LINE" - please visit our web site at .</p> | | |
| <p>BY POST- by making your cheque payable to and sending it to . Payment must be accompanied by a list of the fixed penalty notice numbers covered by the payment and the amount being paid in relation to each number. A receipt will be sent on request.</p> | | |
| <p>IN PERSON - to at between [9.00am and 4.30pm] on any day on which the office is open for business. Any cheque should be made payable to . Payment may be made by debit or credit card if the card is one that is accepted by the Permit Authority in accordance with its standard procedures. Payment must be accompanied by a list of the fixed penalty notice numbers covered by the payment and the amount being paid in relation to each number. A receipt will be provided on request.</p> | | |
| <p>BY TELEPHONE - by contacting at on between [9.00am and 4.30pm] on any day on which the office is open for business. Payment may only be made by using a debit or credit card that is accepted by the Permit Authority in accordance with its standard procedures. You must state the fixed penalty notice number of each notice in respect of which payment is being made and the amount being paid in relation to each number. A receipt will be sent on request.</p> | | |

| OFFENCE CODES AND DESCRIPTION | | |
|---|-----------------------------------|--|
| (By reference to the Traffic Management Permit Scheme (Wales) Regulations 2009) | | |
| CODE | OFFENCE | BRIEF DESCRIPTION |
| PS01 | An offence under Regulation 19(1) | Undertaking specified works on a specified street without a permit where an applicable Permit Scheme requires one. |
| PS02 | An offence under Regulation 20(1) | Breaching a permit condition. |

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SCHEDULE 2

Regulation 27

FORM OF NOTICE WITHDRAWING A FIXED PENALTY NOTICE

| | | |
|--|---|--|
| <p>*</p> <p>(* Insert Permit Authority name)</p> | <p>NOTICE WITHDRAWING FIXED PENALTY NOTICE [NAME OF PERMIT SCHEME ORDER] REGULATION 27 OF THE TRAFFIC MANAGEMENT PERMIT SCHEME (WALES) REGULATIONS 2009</p> | <p>FIXED PENALTY NOTICE Number: </p> |
| <p>TAKE NOTICE that the fixed penalty notice numbered as above is hereby WITHDRAWN.</p> | | |
| <p>NAME OF AUTHORISED OFFICER (in block capitals) :</p> <p style="text-align: right;">.....</p> | | |
| <p style="text-align: center;">DATE :</p> <p style="text-align: right;">.....</p> | | |

EXPLANATORY NOTE

(This note is not part of the Order)

These Regulations make provision with respect to the content, preparation, submission, approval, operation, variation and revocation of permit schemes, being schemes designed to control the carrying out of certain street works and works for road purposes in certain streets within a certain area.

Regulation 3 requires consultation prior to the submission by one or more local highway authorities (the permit authority) of a permit scheme for approval by the Welsh Ministers. *Regulation 4* requires that any such submission must be accompanied by specified information.

Regulation 5 requires any request for variation or revocation of such a scheme to be the subject of the same prior consultation as referred to in *Regulation 3*.

Regulations 6 to 8 require schemes to specify the works that are to be subject to control, the area within which such control is to be exercised and the streets where that control is to be exercised. *Regulation 8* further provides that, with possible exceptions, such streets must be maintainable highways.

Regulation 9 provides that a permit scheme must make provision for permits to be obtained from the permit authority before works are carried out but must also specify those persons and/or circumstances in which such a permit is not required. Copies of permit applications must be provided on request to relevant authorities comprising bridge, sewer, street and transport authorities as well as persons with apparatus in the street.

Regulation 10 states that a permit scheme must include provision to allow the Permit Authority to attach conditions to permits and specifies what types of conditions may be attached. The scheme

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must allow revocation of a permit where a condition attached to that permit is broken. *Regulation 11* provides that schemes may include provision requiring a provisional advance authorisation to be obtained as part of the permit application process. Copies of such applications must be provided on request to relevant authorities comprising bridge, sewer, street and transport authorities as well as persons with apparatus in the street. Such an authorisation provides an indication of likely future approval of the related permit application. *Regulation 12* deals with permit reference numbers. *Regulation 13* provides that schemes may also specify the conditions that will apply in respect of works that, by virtue of exceptions in the scheme, do not need a permit before they are commenced — or include provision enabling the Permit Authority to specify such conditions.

Regulation 14 specifies matters to which the Permit Authority must have regard when considering an application for a permit or a provisional advance authorisation for works, where such an application is received during a period when the carrying out of street works is restricted by the street authority, by reason of the earlier undertaking of substantial road works in the street which is the subject of the application.

Regulation 15 requires that schemes must allow for the variation or revocation of permits and permit conditions. The information required on application for any such variation or revocation and the time within which it must be considered must be set out. The permit authority's policy in respect of reviewing, varying or revoking permits and permit conditions must be included in the scheme.

Regulation 16 requires time limits for responding to applications for permits, provisional advance authorisations, permit variations and variations to permit conditions to be set out in the scheme. Failure on the part of the permit authority to respond to any application in accordance with these time limits will result in that application being deemed to have been granted.

Regulation 17 requires that interested parties should be notified at least 4 weeks before a scheme takes effect as well as before it is varied or revoked.

Regulation 18 enables the permit authority to take reasonable steps to address cases where works are undertaken without a required permit or in breach of a permit condition. *Regulations 19 and 20* provide that such cases will also constitute summary offences attracting a fine not exceeding level 5 on the standard scale (£5,000) where works are undertaken without a required permit or not exceeding level 4 (£2,500) where works are undertaken in breach of a permit condition. *Regulations 21 to 28* provide for a fixed penalty notice scheme as a possible alternative to criminal liability.

Regulation 29 deals with prescribed costs. *Regulations 30 to 32* deal with fees and discounts in relation to permits. Highway authorities are exempt from permit scheme fees. Fees will not be charged for a deemed issue or variation, or variation not sought by the permit holder. Schemes must set out the range of fees payable and the applicable criteria when different fees are payable in respect of different works. Maximum fees are specified. In cases where applications are the subject of a programme designed to produce the least impact for users of the street in terms of timing or extent a discount of 30% is required for all of the applications.

Regulation 33 requires a register of permits to be created and maintained within which certain information must be included. *Regulation 34* provides that the permit authority must afford public access to the register save for information that is certified to be restricted, when access to that information is limited.

Regulations 35 to 38 provide that certain provisions of the New Roads and Street Works Act 1991 and the Street Works (Registers, Notices, Directions and Designations) (Wales) (No.2) Regulations 2008 may, by the order giving effect to a permit scheme made under section 34 of the Traffic Management Act 2004, be applied, disapplied or modified in their application to works in streets which are the subject of a permit scheme.

Provision is made, by *Regulation 39*, enabling service of notices by electronic means and otherwise describing how service may be effected. *Regulation 40* requires permit authorities to operate permit schemes without discrimination.

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The form of a fixed penalty notice is prescribed in Schedule 1. The form of notice withdrawing a fixed penalty notice is prescribed in Schedule 2.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is available from Legislation, Briefing and Policy Delivery Unit, Transport, Planning and Administration Division, Transport Wales, Welsh Assembly Government, Crown Offices, Cathays Park, Cardiff, CF10 3NQ. A copy is annexed to the Explanatory Memorandum which is available alongside this instrument on the Welsh Assembly Government website:

<http://www.assemblywales.org/bus-home/buslegislation/bus-legislation-sub/bus-legislation-sub-annulment.htm>