

Street and road works: street manager and updates to permit schemes – ISPA response

About ISPA

The Internet Services Providers Association (ISPA) is the trade association for providers of internet services in the UK, we have over 150 members, 90% of which are SMEs. Our membership covers the whole spectrum of access provision, using FTTP, FTTC, wireless, satellite and hybrid solutions at a wholesale and retail level. All play a critical role in the delivery of broadband and internet services across the UK to consumers and businesses.

Overview

ISPA welcomes the opportunity to engage with Government on their proposed changes to Permitting schemes and the introduction of the street manager platform. ISPA's members have been involved in the development and pilot testing of the platform and the Department for Transport's (DfT) wider street works agenda.

ISPA's members have repeatedly drawn attention to the need for a consistent approach to street works and permitting across local authorities and are encouraged by DfT's intention to bring modernise and update the existing mechanisms.

The introduction of Street Manager is clearly one step towards this, but it should be noted that the implementation of permit schemes or additional communication functionality for example are not directly addressed by this change. As such, clearly the importance of street works to the ability of broadband operators to extend and upgrade their networks nationwide makes the need to manage this transition even more critical, particularly if the Government's ambitions for the sector are to be met.

Personal details

1. Your name and email address (only used if we need to contact you).

Your name

Your email

2. Are you responding as:

an individual? (Go to question 4)
on behalf of an organisation?

Organisation details

3. Your organisation's name is?

Internet Services Providers Association (ISPA)

Sending notices by post

We would like to amend regulations to make it clear that all street works communications should be sent via street manager or electronic communication.

4. Do you agree that we should remove the current ability to send notices by post?

Yes (Go to question 6)

No

Don't know? (Go to question 6)

Against removing notices by post

5. Why? (Go to question 7 after answering)

ISPA's members, in general support a shift away from post notices, however further assurances and clarity is needed from Government on the processes in place should a system failure or outage impact the ability to send notices electronically.

Last date for transition

6. Which date would you like to be the coming into force date for transition?

31 January 2020

1 March 2020

31 March 2020

Why?

ISPA's members support the shift towards a simple and coordinated system and are keen to work with Government to ensure the transition is as smooth as possible. There are, however, several concerns which industry feel necessitate a longer transition period. ISPA's members therefore see all the above timelines as unviable but would recommend the longest possible timeline of those suggested.

This consultation notes the complex nature of the change from EToN to Street Manager, and the need to avoid disruption. The system has only been in beta testing for six months, and

there remain concerns around the functionality of the system at scale. Furthermore, the suggested timelines do not consider the amount of time needed to plan for and adjust to the full specifications and processes of the platform which have not yet been finalised. ISPA’s members are accelerating roll out plans across the country and a well-functioning platform for street-works is crucial to their success.

Given the scale of change involved, along with the necessity for minimal disruption, the broadband industry calls for a six-month transition period to allow for any potential issues are able to be resolved early on without threat of penalties. A further grace period is also needed for administrative errors and FPNs to allow operators to adjust to the new processes involved as well as clear guidance on the process to correct errors where they do occur.

Amending section 53 to apply to permit schemes and include utility companies

Section 53(5) of the New Roads and Street Works Act 1991 gives the Secretary of State powers to:

1. make arrangements for the duties of street authorities to keep a street works register to be discharged by means of one or more central registers kept by an appointed person
2. require street authorities to participate in and make contributions towards the cost of those arrangements

We are proposing to use these powers to require street authorities to contribute towards the cost of street manager and extend this to utility companies.

7. Do you agree we should amend Section 53 of the New Roads and Street Works Act 1991 to:

	Yes	No	Don't know?
apply to permit schemes?		X	
include utility companies?		X	

Why?

ISPA believes that the requirements under Section 53 on highways authorities to keep a street works register should be upheld given undue cost this would impose on utilities. The proposed changes to require utilities companies to contribute to the cost comes in addition to the new and higher costs under the new permitting provisions.

This places a considerable burden on utilities providers, and one which would undoubtedly divert resources away from the considerable task of rolling out next generation digital infrastructure.

Preventing works being incorrectly identified

We are proposing amending Regulation 3 of the 2007 Noticing Regulations which currently state that major works are defined as:

"street works which have been identified in the annual operating programme of an undertaker, or which, though not specifically identified in such programme, would normally be planned or known about at least six months in advance of the date proposed for the works."

We are proposing amending regulation 3 to remove the words 'which have been identified in the annual operating programme of an undertaker' to prevent incorrect classification.

All the other criteria for the definition of 'major' works would remain the same.

8. Do you agree we should amend the definition of major works to remove the words 'which have been identified in the annual operating programme of an undertaker' to prevent works being incorrectly classified?

Yes (Go to question 10)

No

Don't know? (Go to question 10)

9. Why?

The Dft's proposals to adjust the classification of major works to remove the clause around the inclusion in the annual operating programme are very welcome. The existing system, as the consultation notes, provides for a situation whereby utilities can be overcharged and subject to inflated notice periods purely on the basis that plans were included in an annual operating programme regardless of the length and nature of the works. The industry therefore strongly encourages Government to amend the definition as proposed in the consultation.

Amending the 2009 Charges Regulations

We are proposing amending the 2009 Charges Regulations so that work promoters are required to send up to date information on when:

- works have started and stopped
- roads are open for traffic or closed due to road works and information is as near to real-time as possible

10. Do you agree we should amend the 2009 Charges Regulations to enable up to date information to be sent at the:

	Yes	No	Don't know?
start of works?		X	
stop of works?		X	
progress of works?		X	

Why?

ISPA's membership appreciates the need for accurate information on the status of works, but does not believe that this proposal is practical, particularly in areas that have low connectivity given the Street Manager portal does not have offline functionality. Further to this, members require clarity around the proposed requirements, including definitions of starting and stopping of works, and confirmation around how the two-hour period is impacted outside working hours.

Electronic communications

We would like to amend legislation to support the use of modern technology for sending Fixed Penalty Notices.

11. Do you agree we should remove from legislation the 'form of fixed penalty notice' so that the street manager system will not have to:

	Yes	No	Don't know?
generate a Portable Document Format (PDF) version of the form in the format as currently required by the schedule?	X		
support mail merges?	X		

Why?

ISPA supports the need for a consistent national approach but have concerns over the lack of detail included in these proposals around the fall-back or alternative methods that would be used.

12. Do you agree that the main way fixed penalty notices should be sent is via electronic communication?

- Yes**
- No
- Don't know?

Why?

Again, ISPA's members welcome increased consistency across the board.

Clarifying when traffic lights should be removed

We want to update and clarify the NCT09c condition to ensure that all forms of temporary traffic lights are removed as soon as possible after works have been completed and make this a mandatory requirement for street works.

13. Do you agree we should amend NCT09c to clarify when temporary traffic signals should be removed?

Yes (Go to question 15)

No

Don't know? (Go to question 15)

Against clarifying when traffic lights should be removed

14. Why?

ISPA's members require a full clarification on what is defined as works having been "completed" which has a clear bearing on the proposed changes to NCT09c. There are further complications around what is meant by 'removed from use' where more guidance is necessary.

Clarifying when traffic lights should be removed

15. Do you agree this requirement should be mandatory when temporary traffic signals are used?

Yes

No

Don't know?

Why?

As above.

Placement of apparatus

We would like to introduce a new national condition that would reinforce and support the presumption that street works should be carried out in the footway, footpath or verge. The condition would require the permit authority to:

- assess and recognise that the presence of trees may restrict the ability to place new apparatus under footway, footpath or verge
- allow works in the carriageway, where practical and necessary, for national infrastructure projects, such as broadband and fibre roll out

This would be applied to all permits for new apparatus where possible and practical.

16. Should we add a new condition (condition NCT13) about the placement of apparatus (including the need to assess the impact on street trees and national infrastructure projects) under the footway, footpath or verge?

Yes

No

Don't know?

Why?

Regarding the proposed changes to Condition NCT13, ISPA's members would like to clarify that permit authorities should take in to account the specifics of the site and the potential for existing infrastructure when assessing whether apparatus must be placed within the verge, footway or path.

Many works already take place in the verge where possible given the cost advantages this often brings. It is therefore unclear that there is any evidence that this is actually a challenge that needs further reinforcement, which would also be hard to enforce consistently. Therefore ISPA would question the evidence base for this action and would suggest that it forms the basis for best practise rather than a new condition.

Updating the framework for section 58 road restrictions

We are proposing to amend existing timeframes that apply to road restrictions made under S58 of the New Roads and Street Works Act 1991, to assist roll-out of new utility infrastructure including full fibre networks.

17. Do you agree that we should update the framework for section 58 road restrictions to be updated as proposed?

Yes

No

Don't know?

Why?

The proposed changes to Section 58 road restrictions are strongly supported ISPA's members who agree with the DfT's assessment in this consultation that these restrictions are "overly prescriptive" in the current climate.

The current 2-5-year embargoes can delay or add prohibitive cost to rollout plans which are critical to the Government's full fibre ambitions. Our members further welcome the Government's intentions to emphasise that these restrictions should only apply to 'substantial works' and those that are not 'wholly or largely in the footway or pavement.'

Whilst ISPA welcomes this shift to reduce embargo periods and acknowledge the issues within the existing system, we would urge Government to consider further reductions to these embargoes. ISPA would encourage a reduction of embargoes in relation to all substantial works to two years to aid simplicity.

Impact assessment

18. Do you agree with the assumptions made in the impact assessment?

Yes (Go to question 20)

No

Don't know? (Go to question 20)

Against assumptions

19. Supply your alternative views using supplied tables (after the questions) or in the comment box.

Comments:

N/A

Additional impact assessment comments

20. What, if any, additional data do you have to add to the analysis presented in the impact assessment (attach documentation to your return)?

Comments:

N/A

21. Final comments

21. Any other comments?

The income from permit fees must not exceed the total allowable costs prescribed in the permit regulations and, in the event that fees and costs do not match the actual outturn for any year, adjustments should be considered. There is evidence that some schemes are generating fee income in excess of their costs with, for example, the GLA making use of surplus funds from the

London scheme to award grants to third parties despite the regulations clearly not permitting fees to be used as an additional business tax. Therefore, we recommend that additional guidance is issued to highways authorities requiring an annual review of fee income against allowable costs to be undertaken, with any surplus used to reduce fees charged in subsequent years