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## STREET WORKS PROTOCOL

SEPTEMBER 2018

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### 1. Introduction and background

- 1.1 Gateshead Council's ambition is to make Gateshead a place where everyone thrives. A properly functioning highway network has a key role to play in realising this ambition; it is a major asset for the benefit of people living or working in the Borough or those visiting or travelling through it and it is right that we protect and manage it effectively.
- 1.2 The Council is under a legal duty<sup>1</sup> to manage our road network "*with a view to achieving, so far as may be reasonably practicable ... the expeditious movement of traffic on the authority's road network*". However, we also recognise that utility companies, private contractors and indeed the Council itself do need to undertake work in the highway. A balance therefore needs to be struck between these two sets of demands so that satisfactory notice is given of these works and they are properly managed and coordinated.
- 1.3 This Protocol is intended to set a broad framework for officers to deal with notices, applications and enforcement regarding street works and associated traffic management activities. It applies to Gateshead Council's own highway works, as well as those of utility companies and other external organisations. This Protocol is intended as a basic guide; more detailed guidance or instructions can be found in the national Codes of Practice and elsewhere. Nothing mentioned here overrides any legal requirements.
- 1.4 The New Roads and Street Works Act 1991 (NRSWA) and the Traffic Management Act 2004(TMA) provide the main statutory framework for the successful coordination of street works activities. In Gateshead, responsibility for managing these functions rests with the Council's Development, Transport and Public Protection Service (DTPP).
- 1.5 Utility companies (or "statutory undertakers") are authorised to carry out street works directly through a regulatory framework<sup>2</sup> established under NRSWA which may take one of two forms. The original of these is a "noticing" regime, where they simply need to give prescribed periods of notice, although the Council can require certain changes or impose some conditions. The more recent form is a "permit" regime, where the highway authority must actively consent to the works and may impose various conditions. Around two-thirds of English highway authorities are "permit" authorities.
- 1.6 Like most other North East highway authorities, Gateshead Council currently remains a "noticing" authority. However, along with others in the region,

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<sup>1</sup> <https://www.legislation.gov.uk/ukpga/2004/18/section/16>

<sup>2</sup> <https://www.gov.uk/government/publications/street-works-co-ordination>

the Council is actively considering becoming a “permit” authority during 2019-20, following a request to do so by the Secretary of State for Transport.

- 1.7 Accordingly, utility companies and the Council itself (in relation to our own highway works) currently need only give the required notice of their intention to undertake works in the highway. The Council may also issue street works licences under section 50 of NRSWA to individuals or organisations (e.g. housing developers) who do not have their own statutory powers. In all cases, the amount of notice the law requires to be given depends on the expected duration of the works (hours and days refer to working hours and working days; more details can be found within the national Code of Practice referred to above). The minimum notice periods are as follows:

<b>Works Category</b>	<b>Notice period required</b>
Immediate (urgent/emergency works)	Within 2 hours of the works starting
Minor (up to 3 days duration)	3 days before the works start
Standard (between 4 and 10 days duration)	10 days before the works start
Major (over 10 days duration)	3 months before the works start

The Council does have the power to allow work to start earlier. These notice periods exist for a reason, however, so we would expect there to be objective operational grounds for such requests (not merely for convenience).

- 1.8 Whilst there are certain statutory obligations which cannot be avoided or waived, the Council will always seek to adopt a reasonable and proportionate approach. It must nevertheless be accepted that more significant works (whether in their scope or in their impact on the network) will inevitably attract greater scrutiny and be subject to more stringent conditions.
- 1.9 For the avoidance of doubt and unless the context requires otherwise, general references to “the Council” in this Protocol mean Gateshead Council’s Development, Transport and Public Protection Service. Equally, general references to undertakers mean utility companies, their agents, holders of street works licences or anyone else undertaking street works activities on the Council’s highway network (including, for these purposes, the Council’s own operational highways teams).

## **2. Works on the Council’s highway network**

- 2.1 All utility companies (and indeed the Council itself) are expected to abide by the various Codes of Practice governing street works activities by those organisations. Similarly, any person or organisation operating under a street works licence is expected to abide by the same Codes of Practice as if they are a utility company, unless the Council has agreed otherwise in writing.
- 2.2 It is accepted that circumstances can change and that this may in turn lead to requests for changes to planned timetables or other details. The Council recognises its role in coordinating these activities and helping to support the local economy and we will usually agree to reasonable requests. However, undertakers must also have regard to the reasonableness and proportionality of such requests and the needs and convenience of other people and organisations (including businesses and road users).

- 2.3 When considering extension requests, the Council will have particular regard to the following factors, although this is not an exclusive list:
- how foreseeable it was that more time would be necessary (it is neither reasonable nor appropriate to ask the Council for an extension on the last day of works if it has been obvious for some time that they could not be completed on schedule);
  - the extent to which there has been an attempt to adhere to the original timescales (the Council would not expect to be asked for additional time after significant periods of inactivity at the site which cannot be satisfactorily explained).
- 2.4 Requests for changes or extra time are likely to be refused where the Council considers that the proposed changes will have a detrimental impact on other planned activities or that the undertaker has not acted reasonably or in good faith. Repeated change requests of a similar nature from the same undertakers are likely to attract particular scrutiny.
- 2.5 The Council is increasingly focusing on the quality of highway reinstatements after the works have been completed. Although we always seek to resolve such matters amicably, in the context of this Protocol it is appropriate to emphasise that undertakers are expected to engage fairly and constructively with the Council whenever potential defects are drawn to their attention.
- 2.6 Electronic notification of street works is encouraged because it is more efficient and automatically validates much of the information. Indeed, it is a requirement for utility companies acting under their NRSWA authority to submit notices to us via the “EToN” system.
- 2.7 Organisations without EToN access must complete an appropriate application form and obtain the Council’s consent before commencing any street works. These are available from our website<sup>3</sup>, along with guidance notes. In due course we hope to move to fully online forms and modes of payment.
- 2.8 Whilst all works on the Council’s highway network must be appropriately planned and executed, this is especially important on “traffic sensitive” streets or “strategic routes”. Other than in exceptional circumstances, the Council will expect working and notice periods to be strictly adhered to at such locations. Extensions at these locations are less likely to be agreed.
- 2.9 Where an agreement has been entered into under s.278 Highways Act 1980, it should be noted that this is simply a binding agreement to undertake certain works, normally as a condition for granting planning or some other permission. *Such s.278 agreements provide no exemption from the requirements of NRSWA*, including the need to obtain (and pay for) the relevant licence under s.50 NRSWA (where apparatus of any description is being installed or altered) or under s.171 Highways Act 1980 (where no such apparatus is involved) and to abide by all other standard requirements referred to in this Protocol.

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<sup>3</sup> [www.gateshead.gov.uk/streetworks](http://www.gateshead.gov.uk/streetworks)

### 3. Traffic Management

- 3.1 Safety and the efficient control of traffic frequently require some form of traffic management at road works, often in the form of temporary traffic signals. Undertakers must remember that they do not work in isolation; even apparently simple two-way lights can have unexpected impacts elsewhere. The nature of the road and its normal traffic volumes together with the duration and times of the works are obvious factors which undertakers should take into account when planning any traffic management interventions.
- 3.2 The traffic situation can change quickly and unexpectedly, so undertakers must adopt a proactive approach to traffic management - particularly on strategic routes. They should ensure that conditions are constantly monitored by operatives competent to do so, and that they intervene quickly when an unreasonable level of disruption becomes apparent. Appropriate arrangements must be put in place whenever temporary traffic signals are in operation outside working hours; *they are at all times the responsibility of the works undertaker or their agents, not the Council or the Police.*
- 3.3 With enough notice and subject to available resources, Council officers will give basic advice free of charge to help undertakers decide what traffic management interventions are likely to be appropriate. We or our agents can also design such schemes if requested, but in accordance with industry guidance there would be a charge to be mutually agreed for that service.
- 3.4 Traffic management issues are usually resolved amicably. For the purpose of this Protocol, undertakers are reminded of the Council's Network Management duty referred to in paragraph 1.2 above, especially on strategic routes or traffic sensitive streets. For the avoidance of doubt, this can include directing the immediate removal of any temporary traffic signals.
- 3.5 Utility companies authorised under NRSWA do not normally require advance permission for two-way temporary signals, although they must still notify us of their intention use them. However, the Council can require changes in the event of traffic management issues, and they do require our advance consent for multiphase signals.
- 3.6 All other undertakers/contractors must obtain the Council's advance permission for *all* temporary traffic signals, including two-way ones, for which a charge may apply. The same advance consent should also be sought in relation to the Council's own highway works.
- 3.7 Wherever possible, temporary traffic management should be notified or requested (as required) at the same time as the works themselves. Where that is not possible, a subsequent notice/application will need to be submitted. This can be done through *EToN*, for undertakers who use that system. Otherwise, a separate form must be completed.
- 3.8 In all cases where temporary traffic signals are used, undertakers must be familiar with the requirements that apply in their particular case. Guidance notes are published on our website along with application forms.

3.9 It should be noted that the noticing (or licensing, for non-statutory undertakers) requirements referred to in this Protocol apply whenever any temporary traffic controls are placed on the highway, even if the works themselves are not taking place within the highway.

#### **4. Administration and consultation**

4.1 One of the main aims of NRSWA was always to ensure better coordination of highway works than used to be the case. It follows, therefore, that communication and consultation need to be an integral part of the process.

4.2 The *EToN* system contains an in-built validation system which ensures that works notified comply with various requirements (such as the required notice periods). The Council will also have regard to those requirements before granting any street works licences or related consents.

4.3 Whichever method is used to request or notify us of temporary traffic management, undertakers must carry out appropriate and meaningful consultation and must allow sufficient time for responses to be received. Which organisations need to be consulted, and to what extent, will vary from street to street and will depend on a range of factors, such as when the works are taking place and for how long. It is therefore important that undertakers or their agents know the area well enough to form a proper understanding of the likely impacts of their works and associated traffic management arrangements, both at that specific location and more widely.

4.4 Where undertakers receive responses to their consultations, they must give proper consideration to any valid points raised and make any adjustments to their proposed traffic management arrangements that are reasonable and necessary to address those points. Failure to do so may result in the Council refusing the request or directing that changes be made.

4.5 Along with other notes and forms, specific guidance on consultation in relation to temporary traffic signals can be found on the Council's website<sup>4</sup>. It sets out the approach the Council itself will take when considering such requests, and following it will make a positive response more likely.

#### **5. Enforcement and penalties**

5.1 The majority of works run smoothly. Like any other regulatory function, however, it must be underpinned by effective enforcement. NRSWA provides for Fixed Penalty Notices (FPNs) for various breaches of the regulations, as well as for overrunning or unreasonably prolonged works.

5.2 FPNs may be issued to anyone carrying out works in the highway, regardless of whether they are statutory undertakers or contractors operating under the authority of a licence issued under Section 50 of NRSWA. As made clear on the application form, anyone operating under such a Section 50 licence should ensure that they and/or their contractors comply fully with the terms of that Licence.

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<sup>4</sup> <http://www.gateshead.gov.uk/Transport%20and%20Streets/roads/Traffic-signals.aspx>

5.3 The grounds on which a Fixed Penalty Notice may be issued, together with the amounts payable, are set out in detail within the relevant statutory Code of Practice<sup>5</sup>. Briefly, however, those grounds are as follows:

Relevant section of NRSWA	Brief description (as set out in the legislation)
An offence under section 54(5)	Failure to comply with duties under s. 54 (advance notice of certain works, etc.)
An offence under section 55(5)	Beginning to execute works in contravention of s. 55 (notice of starting date)
An offence under section 55(9)	Failure to give notice in accordance with s. 55(8) (notice to be given on s. 55 notice ceasing to have effect)
An offence under section 57(4)	Failure to give notice in accordance with s. 57 (notice of emergency works)
An offence under section 70(6) consisting of a failure to comply with subsection (3) or (4A)	Failure to comply with requirements to give notice of completion of reinstatement
An offence created by regulations made under section 74(7B)	Failure to give a notice required by regulations under s. 74 (charge for occupation of the highway where works unreasonably delayed)
An offence created by regulations made under section 74A(11)	Failure to give a notice required by regulations under s. 74A (charge determined by reference to duration of works)"

5.4 The process for challenging an FPN is set out on that notice. The Council may require evidence to support any challenge.

5.5 Under The Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009 (as amended)<sup>6</sup>, the Council may issue "Section 74 overrun charges" and these can be very significant. Below is an extract from Chapter 10 of the Streetworks Code of Practice:

**Charges in relation to works occupying the carriageway during the period of overrun**

Item	Description of street	Amount for each of first three days	Amount for each subsequent day
1	Traffic-sensitive street or protected street not in road category 2, 3 or 4	£5,000	£10,000
2	Other street not in road category 2, 3 or 4	£2,500	£2,500
3	Traffic-sensitive street or protected street in road category 2	£3,000	£8,000
4	Other street in road category 2	£2,000	£2,000
5	Traffic sensitive street or protected street in road category 3 or 4	£750	£750
6	Other street in road category 3 or 4	£250	£250

*BUT if, during a period of overrun, the works do not at any time take place in any part of the carriageway, the amount of the charge shown in the table below*

Item	Description of street	Amount for each day
1	Street not in road category 2, 3 or 4	£2,500
2	Street in road category 2	£2,000
3	Street in road category 3 or 4	£250

5.6 The Council will consider reasonable representations based on whether the overrun actually took place, or the duration of that overrun. However, the dates will usually have been supplied to us by the undertaker/contractor and the onus will therefore be on them to prove to the Council that there was no overrun, or that it was less than that indicated. The amounts due are fixed by law as set out in the tables above, and these are not open to negotiation.

<sup>5</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/43578/street-works-code-of-practice.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/43578/street-works-code-of-practice.pdf)

<sup>6</sup> <http://www.legislation.gov.uk/ukxi/2009/303/contents/made>