

To: Swale Joint Transportation Board
By: KCC Highways, Transportation & Waste
Date: 22/2/2024
Subject: Utility Companies and Developers works on the highway.
Classification: Information Only

Summary: This report provides information for Members on the governing legislation for works carried out by Utility Companies and Developers in the highway.

1. Introduction

The highway network exists to enable people to travel by foot, bicycle, motorcycle, car, bus, lorry, etc along it to get from one place to another for whatever reasons they wish, (from simple day to day living to enabling huge businesses to operate.) It also exists to enable a means for all the various utility services to reach where they need to for the same reasons.

This report provides information on the national legislation/codes of practice that govern how Utility Companies and Developers carry out works in the highway.

It also contains information on the duties that KCC, as the Highway Authority, have under that legislation and the measures in place to perform these, as well as information on works volumes, works classification, immediate works and quality of reinstatement compliance. It also contains an update on the Neil Baker's investigation into Utility works.

2. Legislation

The New Roads and Street Works Act 1991 (NRSWA) and the Traffic Management Act 2004 (TMA), supported by relevant regulations and codes of practice provide a legislative framework for works being carried out in the highway. The CoPs were prepared by a Highway Authority and Utility Committee (HAUC) comprising representatives of the Department of Transport (DfT), the Utility Industries and the Highway Authorities. The CoPs were then issued by the DfT as statutory guidance.

The various Utility Companies have a statutory right to place/maintain their apparatus in/on/under the highway. These rights are given to them by their relevant industries primary legislation such as the Electricity Act, the Water Act, the Gas Act, the Communications Act. As such KCC cannot stop Utility Companies from working in the highway.

Developers are able to carry out works in the highway by either working as the Highway Authority under legal agreement (s278 Highways Act) with KCC for highway improvements necessary as part of their developments planning permission. Or by obtaining a s50 NRSWA licence giving them the right to place their own apparatus in the highway, (legally they effectively become a Utility Company,) for their own utility connections to the main supplies.

3. New Roads a Street works Act - Coordination duty

KCC do not manage or are not responsible for Utility Company works.

KCC is required to carry out efficient coordination of works on the highway. This is one of the most important aspects of Street Works legislation. Utilities have a statutory duty to provide their service and maintain their apparatus.

The NRSWA sets out the objectives of the coordination function:

- to ensure safety
- to minimise inconvenience to people using a street
- to protect the structure of the street and the apparatus in it

KCC's key aim is therefore to balance the statutory rights of the utility companies to carry out works with the right of road users to expect minimum disruption from works. Works are coordinated to not clash. It is not a responsibility for KCC to prevent disruption, this is unavoidable with any work taking place that impacts the highway.

The Traffic Management Act enabled KCC to bring into operation the Kent Permit Scheme. Permits are not issued to give permission to do works as Utility Companies already have that, they are issued to enable the coordination of works. The scheme lets KCC add specific conditions to permits to reduce the disruption caused, such as: -

- Manual control of traffic lights
- Longer hours of working
- Off peak working
- Directions to work outside of term time near schools.
- Notifications to bus companies
- Advance warning signs

These conditions must be reasonable and are open to challenge. A "working day" under the NRSWA is 0800hrs to 1630hrs Monday to Friday. Requesting longer working hours or weekend working can therefore only normally be requested at traffic sensitive locations. Proposed works durations can also be challenged if considered unreasonable.

If permit conditions are not adhered to or agreed durations of work overrun, then Fixed Penalty Notice fines (FPNs) or Overrun charges can be issued to the utility company. (See Appendix A for details.) These charge amounts are detailed in the DfT's CoP.

The same applies to Developer works service connection on the highway but not for any works carried out under a s278 legal agreement. The developer in those instances is legally considered as being the Highway Authority and FPNs or Overrun charges do not apply.

The TMA also enables KCC to operate a Lane Rental Scheme on the busiest 5% of the primary network. The scheme imposes a daily charge for works that impede the flow of traffic. This is designed to encourage all works to be carried out in the most efficient manner possible. The 5% amount is fixed by DfT guidance.

Further information about the Kent Permit Scheme or the Kent Lane Rental Scheme may be found on our website:

<https://www.kent.gov.uk/roads-and-travel/highway-permits-and-licences>

4. Permit applications

(See Appendix B for last 7 years figures, this includes KCC highway works which are 43% of all works)

KCC have seen a steady increase in permit applications over the last 7 years. Approximately a 46% increase in works taking place on the highway. This is due to several factors, the main ones being:

- An increase in housing development works
- An ageing network of utility apparatus in the highway needing repair.
- Gigabit broadband rollout
- Requirement to fix water leaks quicker.

5. Works Classification

The NRSWA Coordination CoP defines the different works classification.
(See Appendix C for details as well as the notice period required for each.)
This is not something that KCC can change.

6. Immediate Works

Works Promoters are allowed within legislation to commence these works as and when they need to and only have to notify KCC within 2 hours of the work starting.

The CoP states that the assessment of what qualifies as Immediate works is made by the works promoter carrying out the works.

Currently during 2023/24 approximately 30% of all permit applications are for Immediate works. In most cases no warning can be given for these works, and it is not possible to coordinate them effectively.

7. Reinstating the Highway Following Works

To ensure that reinstatements are compliant with the requirements of the NRSWA CoP, KCC is empowered to carry out investigatory works to check on whether or not a utility company has complied with the duties placed on it in respect of reinstatement of the street. This Act makes utility companies wholly responsible for ensuring their works are compliant and KCC are empowered to charge them for a number of sample inspections that they will carry out to monitor their performance. Where reinstatements are found to be defective utility companies are required to complete remedial repairs within specific time limits.

Under this legislation no council is required to inspect all utility works, only a random sample. The fee recover from utility companies only covers this element and such we do not have resources to inspect all utility reinstatements, which would be unaffordable. This sample equates to 30% of works at various stages. (10% when works are taking place, 10% when reinstated, 10% nearing end of guarantee period.)

This year to end of Jan 2024 KCC inspectors have completed approx. 32,000 inspections of works.

As noted above any reinstatement work found to be defective whether in a sample inspection or not remains the responsibility of the utility company provided it is within the 2-year guarantee period. (3 years for excavations over 1.5m in depth.)

The inspection sample size is raised for bad performers and lowered for good performers. This is constantly reviewed throughout each year.

Developer works carried out under s278 legal agreement are inspected throughout the construction process as set out in each agreement.

Developer works carried out under s50 NRSWA licences are inspected at each of the 3 stages listed above. The developer pays for these inspections as part of the licence fee.

8. Update on Investigation of Utility Company works.

- Additional resource – 4 new Inspectors have been put in place to monitor and provide information specifically regarding Road Closures. Currently completing training.
- A project group has been set up to look at ways to enforce improved performance, possible duration reductions and how to raise these issues with the DfT.
- Investigate possible changes of legislation/CoP.

The KCC Streetworks Teams will continue to work with the Utility Companies and own KCC work promoting teams to improve performance.

Conclusion

1. This report is for Members' information.

Contact Officers:

The following contact officers can be contacted on **03000 418181**

Chris Seare

Streetworks Manager East Central Area

Appendix A – FPN/Overrun Charges

FPN Charges

Offence	Full Charge	Discounted charge (if paid within 29 calendar days)
Noticing errors	£120	£80
Working without a permit	£500	£300
Working in breach of permit conditions	£120	£80

Overrun Charges

Maximum charges in relation to works occupying the carriageway during the overrun period.

General description of road.	Amount £ (each of first 3 working days)	Amount £ (each subsequent working day)
Busiest A-roads	5,000	10,000
Rural A-roads	2,500	2,500
Busy B-roads	3,000	8,000
Less busy B-roads	2,000	2,000
Busy minor roads	750	750
Less busy minor roads	250	250

These charges can only be applied if the overrun was unavoidable.

If works are complete and just a few signs have been found to be left on site a £100 mitigated charge can be issued.

Appendix B – Permit applications numbers

Year	Amount
2017/18	108,292
2018/19	124,527
2019/20	125,350
2020/21	146,596
2021/22	158,818
2022/23	154,930
2023/24 (to end of Jan24)	123,742

Appendix C

Classification	Definition	Notice required
Minor Works	3 working day duration or less	3 working days
Standard Works	4 to 10 working day duration	10 working days
Major Works	works with planned duration of 11 or more working days or any works requiring a temporary traffic regulation order	3 months
Immediate Works (2 types)	<u>Emergency</u> - works to prevent danger to persons or property. <u>Urgent</u> - works to prevent a loss or restore any supply or service.	Within a 2-hour period after starting the works.