



# Traffic Management Act 2004

## 2004 CHAPTER 18

### PART 3

#### PERMIT SCHEMES

#### **32 Meaning of “permit scheme”**

- (1) Any reference in this Part to a permit scheme is a reference to a scheme which is designed to control the carrying out of specified works in specified streets in a specified area.
- (2) A permit scheme may (in particular) include provision—
  - (a) for or in connection with requiring a permit to be obtained before specified works are carried out (including provision as to the persons who are required to obtain permits),
  - (b) for or in connection with the issue of permits (including provision with respect to applications for permits, provision for cases in which there is to be an entitlement to the issue of a permit and provision with respect to cases in which permits are to be deemed to be issued),
  - (c) as to cases in which specified works may be carried out without a permit,
  - (d) for or in connection with the imposition of conditions which are to apply in relation to the carrying out of specified works (including provision for or in connection with the attachment of such conditions to permits),
  - (e) for or in connection with the review or variation of permits or such conditions (including provision with respect to applications for such variations).
- (3) In this section “specified” means specified, or of a description specified, in a permit scheme.

#### **33 Preparation of permit schemes**

- (1) A local highway authority, or two or more such authorities acting together, may prepare and submit to the appropriate national authority a permit scheme.

- (2) The appropriate national authority may direct a local highway authority, or two or more such authorities acting together, to prepare and submit to the national authority a permit scheme which takes such form as the national authority may direct.
- (3) The appropriate national authority, in its capacity as a highway authority, may prepare a permit scheme.
- (4) The Secretary of State, in his capacity as the person with responsibility for the management and control of streets in the Royal Parks, may prepare a permit scheme in respect of any such streets.
- (5) Those preparing permit schemes—
  - (a) must comply with permit regulations, and
  - (b) must have regard to any guidance which may be issued by the appropriate national authority.

### **34 Implementation of local highway authority permit schemes**

- (1) This section applies where a permit scheme is prepared and submitted to the appropriate national authority (“the authority”) in accordance with section 33(1) or (2).
- (2) The authority may approve the scheme with or without modifications.
- (3) Where it approves the scheme with modifications, references in subsections (4) and (5) to the scheme are to be read as references to the scheme as so modified.
- (4) The scheme shall not have effect unless the authority by order gives effect to it.
- (5) An order under subsection (4)—
  - (a) must set out the scheme and specify the date on which the scheme is to come into effect, and
  - (b) may (in accordance with permit regulations) include provisions which disapply or modify enactments to the extent specified in the order.

### **35 Implementation of other permit schemes**

- (1) This section applies where a permit scheme is prepared in accordance with section 33(3) or (4).
- (2) The scheme shall not have effect unless the appropriate national authority by order gives effect to it.
- (3) An order under subsection (2)—
  - (a) must set out the scheme and specify the date on which the scheme is to come into effect, and
  - (b) may (in accordance with permit regulations) include provisions which disapply or modify enactments to the extent specified in the order.

### **36 Variation and revocation of permit schemes**

- (1) The appropriate national authority may by order vary or revoke any permit scheme which for the time being has effect.
- (2) An order under this section—

- (a) may relate to one or more permit schemes,
- (b) may vary or revoke any order under section 34 or 35, or any order previously made under this section,
- (c) may (in accordance with permit regulations) include provisions which disapply or modify enactments to the extent specified in the order.

### **37 Permit regulations**

- (1) The appropriate national authority may by regulations (“permit regulations”) make provision with respect to the content, preparation, submission, approval, operation, variation or revocation of permit schemes.
- (2) Permit regulations may—
  - (a) set out procedural provisions with which those preparing permit schemes must comply,
  - (b) set out standard provisions which may or must be included in a permit scheme,
  - (c) make provision as to the publicity to be given to permit schemes.
- (3) Permit regulations may make provision—
  - (a) with respect to any of the matters mentioned in section 32(2) (including provision as to the conditions or types of conditions which may be imposed by virtue of section 32(2)(d)),
  - (b) for the purpose of limiting the streets, or type of streets, which may be the subject of a permit scheme.
- (4) Permit regulations may make provision—
  - (a) as to the criteria to be taken into account in the case of decisions with respect to the issue, review or variation of permits or decisions with respect to the imposition, review or variation of conditions,
  - (b) for or in connection with the determination, or facilitating the determination, of disputes (including provision with respect to the appointment of persons to determine, or facilitate the determination of, disputes),
  - (c) for or in connection with appeals (including provision with respect to the appointment of persons to hear appeals),
  - (d) as to the action which may be taken if works are carried out without a permit or if any conditions are not complied with,
  - (e) for or in connection with the creation, in prescribed cases (including prescribed cases where works are carried out without a permit or in breach of any conditions), of a criminal offence triable summarily and punishable with a fine not exceeding level 5 on the standard scale,
  - (f) for or in connection with excluding or limiting the liability of prescribed undertakers in prescribed cases.
- (5) Provision under subsection (4) in respect of adjudication may not be made without the consent of the Lord Chancellor.
- (6) Permit regulations may make provision for or in connection with the giving of fixed penalty notices (including, in particular, provision applying Schedule 4B to the New Roads and Street Works Act 1991 (c. 22), with or without modifications) in relation to any offence created by permit regulations.

- (7) Permit regulations may make provision for or in connection with the payment of a fee in respect of any one or more of the following—
- (a) an application for a permit,
  - (b) the issue of a permit,
  - (c) an application for the variation of a permit or the conditions attached to a permit,
  - (d) the variation of a permit or the conditions attached to a permit.
- (8) Provision made under subsection (7) may include provision as to—
- (a) the amount or maximum amount of any fee,
  - (b) cases in which fees are not to be payable or are to be repaid,
  - (c) cases in which fees may be discounted,
  - (d) the time and manner of making payment of fees,
  - (e) the application of sums paid by way of fees.
- (9) In making provision under subsection (7), the appropriate national authority must try to ensure, so far as is reasonably practicable, that the fees payable in connection with permit schemes do not exceed such costs in connection with permit schemes as may be prescribed.
- (10) For the purposes of subsection (9), the national authority may rely on such estimates (including estimates with respect to the average costs of highway authorities or particular descriptions of highway authority) as the national authority thinks fit.
- (11) Permit regulations may make provision—
- (a) for or in connection with the creation and maintenance of registers of permits,
  - (b) with respect to access to information contained in any such registers (including provision restricting such access),
  - (c) with respect to the keeping of accounts, and the preparation and publication of statements of account, relating to permit schemes.
- (12) Permit regulations may make provision for or in connection with permitting a highway authority, or two or more such authorities acting together, to prepare a permit scheme in respect of streets in a particular area which are maintainable highways notwithstanding that the authority, or those authorities, are not the highway authority for all or any of those streets.
- (13) Permit regulations may set out provisions—
- (a) which disapply or modify enactments, and
  - (b) which are to or may apply in the case of permit schemes.
- (14) Nothing in subsections (2) to (13) is to be taken as affecting the generality of subsection (1).

### **38 Crown application**

- (1) This Part and any provisions made under it bind the Crown (but do not affect Her Majesty in her private capacity or in right of Her Duchy of Lancaster or the Duke of Cornwall).
- (2) Nothing in subsection (1) is to be construed as authorising the bringing of proceedings for a criminal offence against a person acting on behalf of the Crown.

### 39 Interpretation of Part 3

(1) In this Part—

“the appropriate national authority” means—

- (a) the Secretary of State, as respects England, and
- (b) the National Assembly for Wales, as respects Wales;

“condition” is to be construed in accordance with section 32(2);

“enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act

1978 (c. 30)

);

“fixed penalty notice” means a notice offering a person the opportunity of discharging any liability to conviction for an offence by payment of a penalty;

“highway authority” and “local highway authority” have the same meaning as in the Highways Act

1980 (c. 66)

;

“maintainable highway” has the same meaning as in Part 3 of the New Roads and Street Works Act

1991 (c. 22)

;

“permit” is to be construed in accordance with section 32(2);

“permit scheme” is to be construed in accordance with section 32;

“permit regulations” is to be construed in accordance with section 37;

“prescribed” means prescribed, or of a description prescribed, by regulations made by the appropriate national authority;

“Royal Park” means any park to which the Parks Regulation Act

1872 (c. 15)

applies (see sections 1 and 3 of the Parks Regulation (Amendment) Act

1926 (c. 36)

);

“street” means a street (within the meaning of Part 3 of the New Roads and Street Works Act 1991)—

- (a) which is a maintainable highway, or
- (b) which is situated in a Royal Park;

“street works” has the meaning given by section 48(3) of the New Roads and Street Works Act 1991;

“undertaker” has the same meaning as in Part 3 of that Act;

“works” means—

- (a) prescribed street works, and
- (b) such other works or activities as may be prescribed,

but activities may not be prescribed under paragraph (b) unless they are, or correspond to, activities which are regulated or controlled by the Highways Act 1980.

(2) An order or regulations under this Part—

- (a) may make different provision for different cases or different areas,
- (b) may include incidental, supplemental, consequential or transitional provision or savings.

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*Status: This is the original version (as it was originally enacted).*

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- (3) A power to make an order or regulations under this Part is exercisable by statutory instrument.
- (4) The first permit regulations may not be made by the Secretary of State unless a draft of them has been laid before and approved by a resolution of each House of Parliament.
- (5) Subject to that, a statutory instrument containing regulations under this Part made by the Secretary of State is subject to annulment in pursuance of a resolution of either House of Parliament.