



## THE HIGHWAYS ACT 1980

### CONDITIONS OF LICENCE (MADE UNDER SECTION 169 AND 172 OF THE HIGHWAYS ACT 1980) FOR THE OCCUPATION OF THE ROAD/HIGHWAY IN CONNECTION WITH BUILDING WORK

1. Section 169 of the Highways Act 1980 and the conditions of this licence provide that; Subject to subsection (6) below no person shall, in connection with any building or demolition work or the alteration, repair, maintenance or cleaning of any building, erect or retain on or over a highway any scaffolding, hoarding, fencing, staging, crane, access machinery, portable cabin, hut, cables, building, building materials or other structure/activity which obstructs the highway (hereafter in this section referred to as a "relevant structure/activity") unless he is authorised to do so by a licence in writing issued for the purposes of this section by the highway authority (hereafter in this section referred to as a "licence") and complies with the terms of the licence; and a licence may contain such terms as the authority issuing it thinks fit.
2. If a person applies to a highway authority for a licence in respect of any relevant structure/activity and furnishes the authority with such particulars in connection with the structure/activity as the authority reasonably demand, it is the duty of the authority to issue a licence to him in respect of the structure unless the authority consider – **(a)** that the structure would cause unreasonable obstruction of a highway; or **(b)** that a relevant structure erected otherwise than as proposed by the applicant would cause less obstruction of a highway than the structure proposed by him and could conveniently be used for the work in question.
3. If on an application for a licence in connection with a highway the highway authority refuse to issue a licence or issue a licence to which the applicant objects, the applicant may appeal to a magistrates court against the refusal or terms; and on such an appeal the court may – **(a)** in the case of an appeal against a refusal, direct the highway authority to issue a permit in pursuance of the application; **(b)** in the case of an appeal against the terms of the licence, alter the terms.
4. Subject to subsection (6) below, it is the duty of a person to whom a licence is issued by a highway authority in respect of a relevant structure/activity **(a)** to ensure that the structure/activity is adequately lit at all times between half an hour after sunset and half an hour before sunrise; **(b)** to comply with any directions given to him in writing by the authority with respect to the erection and maintenance of traffic signs in connection with the structure/activity; and **(c)** to do such things in connection with the structure/activity as any statutory undertakers reasonably request him to do for the purpose of protecting or giving access to any apparatus belonging to or used or maintained by the undertakers.
5. In this subsection and in section 171 (2) below "statutory undertakers" means any of the following, namely, any body who are statutory undertakers within the meaning provided by section 329 (1) below, the post office, any public authority exercising functions by virtue of any provision of sections 14 and 15 of the water act 1973 (which relate to sewerage) and any person entitled to the benefit of a licence in respect of the highway in question under section 181 below. A person who contravenes the provisions of section (1)



above otherwise than by failing to comply with the terms of a licence or who fails without reasonable excuse to comply with the terms of a licence or to perform a duty imposed on him by subsection (4) above, is guilty of an offence and liable to a fine not exceeding £2,000.

**6.** Nothing in the preceding provisions of this section applies to a relevant structure erected before 14 February 1977 or erected or retained by the British Railways Board, the British Waterways Board or London Regional Transport or any subsidiary of theirs (within the meaning of the London Regional Transport Act 1984) in the exercise of powers conferred on the body in question by any enactment; and nothing in paragraph (a) or (b) of subsection (4) above applies to a relevant structure/activity if no part of it is less than 18 inches in a horizontal direction from a carriageway of the relevant highway and no part of it over a footway of the relevant highway is less than 8 feet in a vertical direction above the footway.

**7.** No civil or criminal proceedings lie in respect of any obstruction of the highway which is caused by a relevant structure/activity if the structure/activity is on or over the highway in accordance with a licence and the person to whom the licence is issued performs the duties imposed on him in respect of the structure/activity by subsection (4) above; and a highway authority by whom a licence is issued do not incur any liability by reason of the issue of this licence.

**8. (1)** The scaffolding (or other structure) shall be placed so as to avoid undue obstruction and interference with users of the highway and at least 1.25m clear on the footpath for the passage of pedestrians shall be maintained. If this clearance on the footway cannot be maintained, a portion of the carriageway must be fenced off for protection. Such fencing will need to be approved by the highway authority and may be subject to further conditions. No part of the structures shall be within 0.45m of the face of the footway kerb without approved signing and guarding (see section 4 below.)

**(2)** The scaffolding/structure shall be designed, erected, secured and maintained in accordance with all relevant, current standards set by the HSE and with due regard to a comprehensive risk assessment. Such risk assessment shall take particular account of the erection, maintenance and dismantling and the effect of and on all types of traffic that will pass under or nearby the scaffolding/structure. Proof of compliance with such may be required by the highway authority prior to granting the licence and at any point in the duration of the licence.

**(3)** The lower portions of any scaffolding shall be painted white or wrapped in brightly coloured 'hazard' tape to a height of 2m. Scaffolding and structures shall be illuminated by means of amber danger lamps. Such illumination shall be provided to define the extent of any obstruction of the highway. The lighting requirements will differ with each application and the contractor's proposals for such may be required by the highway authority prior to granting the licence. As a minimum, lamps shall be placed at the extremities of any scaffolding or structure and at regular intervals (usually 4m) along its length. Lamps shall be steady and have an illuminative power of not less than one candela and must remain lit throughout the hours of darkness (between half an hour after sunset and half an hour before sunrise). They shall be placed in such a manner as to not cause a nuisance to pedestrians or vehicular traffic.



**(4)** All scaffolding/structures shall be signed and guarded at all times, in accordance with the requirements described in Chapter 8 of the Traffic Signs Manual. Works for the erection and dismantling of the scaffolding/structure shall also be signed and guarded in accordance with this document. Signing and guarding shall provide for the safe passage of pedestrian and vehicular traffic at all times. The highway authority will require signing and guarding proposals prior to the approval of the licence.

**(5)** No part of the highway shall be excavated without obtaining prior permission from the highway authority.

**(6)** All necessary precautions must be taken to protect the public, including where necessary the erection of protective screens and debris netting.

**(7)** Except where agreed as part of this licence no part of the highway may be closed, AT ANY TIME, without the consent of the highway authority.

**(8)** The Applicant shall allow at least four weeks between the date of application for a licence to place a scaffold/structure on the highway and the date on which the licence is intended to commence.

**(9)** Any request for an extension to the period for which the licence has been granted MUST BE MADE IN WRITING to the highway authority at least 48 hours (excluding Saturday and Sunday and Bank holidays) PRIOR to the expiry of the existing licence.

**(10)** The Licensee shall indemnify the City Council in respect of any third party claims or demands, which may arise from the placing of any of the above mentioned activities in Section 1. on the highway.

**(11)** The Licensee shall effect insurance indemnifying the Licensee and the City Council in the terms of the indemnity set out in condition 10 hereof for the duration of the licence and shall, when required by the City Council produce evidence of such insurance to the satisfaction of the City Council. Such insurance shall afford indemnity of not less than £10 million in respect of each and every occurrence or series of occurrences caused by or attributable to any event giving rise to a claim. On the expiry of the licence the highway where the scaffolding/structure was positioned shall be left in a clean and tidy condition and any damage to the highway shall be repaired to the satisfaction of the highway authority at the expense of the licence holder.

**(12)** Any significant alterations to a licensed scaffolding or structure that will affect the highway shall cause the licence to be withdrawn unless the highway authority first agrees such alterations. Where such alterations are to be made the licence holder shall inform the highway authority in writing giving full details of the alterations, including any change to the lighting and signing & guarding arrangements.

**(13)** Nothing in this licence absolves the holder from his responsibilities under Section 172 of the Highways Act 1980, pertaining to hoardings.

**(14)** Nothing in this licence absolves the holder from his responsibilities to maintain access or provide protection to apparatus owned, used or maintained by Statutory Undertakers.

Note: (1) The 'highway' can include the carriageway, footway and any verge. (2) A criminal offence is committed if these conditions are breached.



## **9. BUILDING MATERIALS ON THE HIGHWAY**

- (a)** For all loose material, a pipe of at least 75mm diameter must be placed in the channel to allow for water to flow away. If loose materials block gullies, the full cost of unblocking them will be charged to the licence holder.
- (b)** Tar, cement, concrete mixers and any items likely to discolour the highway must be placed on boards, tarpaulins or sheeting.
- (c)** Materials must be kept within the frontage of the premises for which the licence is granted and should extend no more than 2 metres into the carriageway.
- (d)** Materials must be used and cleared within a reasonable time.
- (e)** A licence is issued for materials that are intended for use only. Rubbish and debris must be placed in a Skip or removed.
- (f)** The deposit will be refunded once you have informed us that the site is clear and the inspector is satisfied that no damage has been caused to the highway as a result of the materials that you have placed.

**10.** We shall require that a copy of the post erection Safety Inspection Certificate following the erection of a tower crane is sent to the Highways Network Manager at Southampton City Council, City Depot and Recycling Park, First Avenue, Millbrook, Southampton, Hampshire SO15 0LJ.

**11.** Access to any statutory undertakers' plant must be made available when required and consent shall be suspended if road or street works are to be carried out.

**A.** Section 115 K of the Highways Act 1980 provides: **(1)** If it appears to a council that a person to whom they have granted a permission under Section 115E above has committed any breach of the terms of the licence, or special conditions attached to the licence they may serve a notice on him requiring him to take such steps to remedy the breach as are specified in the Notice within such time as is so specified. **(2)** If a person on whom a person is served under subsection (1) above fails to comply with the notice, the Council may immediately suspend or revoke the licence with no compensation payable to the licence holder. **(3)** Where a Council have incurred expenses in the exercise of the power conferred on them by subsection (2) above, those expenses, together with interest at such reasonable rate as the Council may determine from the date of service of a notice of demand for the expenses, may be recovered by the Council from the person on whom the notice under subsection (1) above was served.