Department for Transport

January 2012

# A Consultation Paper issued by the Department for Transport on amending the Traffic Management Act 2004 - revising the permit scheme approval process (for local highway authorities in England)

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# Booklet of Supporting Documents

To assist consideration of the proposals set out in this consultation document there is an accompanying booklet containing extracts of documents related to 'permit schemes', these documents are as follows:

Commentary

Appendix A: Part 3 of the Traffic Management Act 2004 (as extract).

Appendix B: draft Legislative Reform Order – (copy also included in the consultation document).

Appendix C: draft statutory instrument to amend the Traffic Management Permit Scheme (England) Regulations 2007

Appendix D:  Initial Impact Assessment on changes (copy also included in the Consultation document).

Appendix E: TMA 2004 Guidance Note - Statutory Guidance for Local Highways Authorities in England: Preparation of Permit Schemes (2nd Edition) - draft amended extract.

Appendix F: Traffic Management Act 2004 Code of Practice for Permits – Procedures and Guidance - draft amended extract.

Appendix G: Traffic Management Act 2004: Permit Schemes Decision Making Process - draft amended extract

Documents at Appendix F to G are extracts (due to their length) to which draft amendments have been made. They are therefore not legal documents. Following consideration of responses to this consultation these documents are likely to be subject to further change and amendments. Please note that the Draft Code of Practice for Permit Fees Guidance issued July 2008 has not been included as any changes would be minimal (there are no plans to change the fees for permit schemes).

Full copies of the existing documents can be obtained from the Department's website at www.dft.gov.uk

# 1. Summary

## What the consultation is about – 'permit schemes'

**1.1** Traffic Management Act 2004 ("TMA 2004") Part 3 introduced 'permit schemes', which are the means by which local highways authorities ("authorities") in England and Wales can develop and submit a scheme which, if approved by the Secretary of State, allows them to provide 'permits' to applicants, who wish to undertake works. The TMA 2004 also provides the power for the Secretary of State to make Regulations covering requirements for permit schemes applications, fees and conditions to be attached to permits. Those Regulations were made and are called the Traffic Management Permit Scheme (England) Regulations 2007 ('the Permit Regulations').

**1.2** Developing, introducing and operating a 'permit scheme', which applies to works both carried out on behalf of utility companies and on behalf of authorities, enables those authorities much greater scope to manage and coordinate works; so as to reduce disruption.

**1.3** Currently TMA 2004 and the Permit Regulations require that where an authority (or authorities) seeks to introduce a permit scheme, they must submit proposals to the Secretary of State for assessment and approval. That scheme can only come into operation once it has been approved and given effect by Order of the Secretary of State. This requires a statutory instrument to be laid before Parliament (secondary legislation). Any variation or revocation of a permit scheme must also be considered by the Secretary of State and given effect to by Order.

## The proposal

**1.4** This consultation document seeks views on the proposal, (which relates to England only) to remove the requirements for the Secretary of State to give effect to permit schemes by Order. This would mean that local highway authorities could give effect to permit schemes and vary or revoke their schemes by their own orders, without the need to refer the scheme for prior approval to the Secretary of State.

**1.5** At present Part 3 of TMA 2004 relates to both England and Wales, but the proposed change relates to England only. The National Assembly for Wales will retain the existing approval role, set out in TMA 2004 and the equivalent Regulations. To achieve the proposal will require changes to primary and secondary legislation, and it is proposed that this will be achieved by using a Legislative Reform Order (LRO) under the Legislative and Regulatory Reform Act 2006 (2006 Act). The consent of the Welsh Ministers has been sought and granted to this consultation and, in due course, if the draft LRO is laid before Parliament, the Welsh Ministers will seek the consent of the National Assembly to the making of that Order This consultation is being made in accordance with the requirements of the 2006 Act and the Government's Code of Practice on written consultations. Subject to the outcome of consultation and to Parliamentary processes, we propose that the changes are implemented this year.

## Who may wish to respond to this consultation?

**1.6** Responses are welcomed from anyone, but representatives from local authorities and utility companies, as well as those representing the full range of road users, are likely to wish to respond.

## Duration of consultation

**1.7** The consultation period will run from 31 January 2012 to 25 April 2012**.**

## How to respond

**1.8** You are invited to respond to the questions using the questionnaire response form at (Addendum C provided on the website in a separate word document). Once completed the questionnaire can be emailed to Permit.Schemes@dft.gsi.gov.uk or printed and returned by post to:-

Ann Morley

Permit Scheme Approval Process Consultation
Zone 3/26
Department for Transport
Great Minster House
33 Horseferry Road
London
SW1P 4DR

**1.9** If you would like further copies of this consultation document it can be found at www.dft.gsi.gov.uk or you can contact Claudette Bagalo (as below) if you would like alternative formats (Braille, audio CD, etc).

Claudette Bagalo
Department for Transport,
Great Minster House,
Zone 5/23
33 Horseferry Road
London
SW1P 4DR

## What will happen next?

**1.10** Following the closure of this consultation on 25 April 2012, the Department for Transport will consider all of the representations submitted and publish a summary of them and its conclusions on our website at www.dft.gov.uk within three months of the consultation closing.

# Freedom of Information

**1.11** This consultation has been produced in accordance with the principles of the Government's "Code of Practice on Consultation" (see Addendum A).

**1.12** Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the Freedom of Information Act 2000 (FOIA) or the Environmental Information Regulations 2004.

**1.13** If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

**1.14** In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information, we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

**1.15** The Department will process your personal data in accordance with the Data Protection Act (DPA) and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

# 2. Introduction to the proposal and background to 'permit schemes'

**2.1** The Government is pursuing an active policy of devolving powers and decision-making from Whitehall to the relevant tier of local government. It is the Government's view that devolution of powers direct to the relevant authority needs to be accompanied by greater transparency from that authority - so that local authorities can be held to account by the local communities they serve (rather than by central government). This policy is being taken forward only after careful consideration and evaluation of the impacts of the proposed changes.

**2.2** Currently, within Part 3 of TMA 2004 (primary legislation) and the Permit Scheme Regulations (the accompanying secondary legislation) there exists the power for the Secretary of State and Welsh Ministers to enable an authority or authorities to introduce 'permit schemes'. Permit schemes, although approved by the Secretary of State and Welsh Ministers, are: designed, developed and are ultimately administered by local authorities, who are the appropriate bodies to best control the carrying out of specified works in specified streets. The legislation requires that both the Secretary of State and Welsh Ministers undertake an assessment of each proposed scheme and any subsequent variations and provide formal approval before each scheme or scheme change can be implemented.

## Benefits of Permits Schemes

**2.3** There is no requirement (and this will not change) for an authority to introduce permit schemes; it is currently on application by an authority to the Secretary of State. Permit schemes provide local authorities with an alternative to the "noticing system" (introduced under the New Roads and Street Works Act 1991 (NRSWA)) whereby statutory undertakers (mostly utility companies) inform authorities of their intentions to carry out works in their areas. Where a permit scheme is in operation statutory undertakers wishing to carry out works in a street would need to apply for a permit to do so (a permit can only cover one street). If a permit is granted they would not need to comply with the noticing system under NRSWA.

**2.4** The ability to provide permits enables each authority to set out detailed conditions when they grant each permit, so helping to ensure greater effective control over the use of the road network.

**2.5** Currently the Secretary of State is required by TMA 2004 part 3 to undertake a comprehensive assessment of each proposal to introduce a permit scheme. Assessments are current based on the following four tests:

- Test 1: A test of the compliance of the proposed scheme with the requirements of relevant legislation and the Secretary of State's statutory guidance.
- Test 2: A test to determine if the proposed permit fees are reasonable and adequately justified (s37 (9) of the Traffic Management Act 2004).
- Test 3: A test of whether the proposed scheme is likely to deliver value for money - is the scheme likely to deliver net benefits to road users and wider society that exceed the additional costs of the scheme.

- Test 4: A consideration of whether the scheme is deliverable in practice, and if it is therefore in the public interest to give effect to the scheme through an Order.

## Reasons for the proposed change

**2.6** When the existing process was enacted in the TMA 2004 the Permit Scheme Regulations were an untested concept. It was felt necessary for there to be some central control to prevent, for example, a large number of schemes coming into operation before the approach was proven, and to be assured that schemes complied with the requirements in the Permit Regulations.

**2.7** There are now a number of authorities operating 'permit schemes' which have been subject to the assessment process. Permit schemes cover London (including Transport for London roads), Kent, Northamptonshire and most recently St Helens. Evidence from schemes in place over 12 months show they are delivering promising improvements to the effective use of the road network. A number of other authorities in England are developing proposals for their own schemes.

**2.8** This consultation paper sets out the Government's proposals for the removal of the requirement for local authorities to submit applications to operate permit schemes or vary existing schemes and for the Secretary of State to consider and approve those applications giving effect to new or varied schemes by order. We propose to introduce the reform by means of a LRO under the 2006 Act and this consultation is being conducted in accordance with the provisions of section 13 of that Act. Views are invited on all aspects of the consultation paper, and a number of specific questions are set out in a separate word document - shown as Addendum C on the website.

## The Proposal

**2.9** This Consultation document seeks views on the proposal (which relates to England only and which will require amendments to legislation) **for the cessation of the requirement for the Secretary of State to assess and approve a highway authority or highway authorities application to develop and implement or revise or revoke permit schemes.**

## Overview of the proposed changes

**2.10** By making the proposed change the system for administrating 'permit schemes', by authorities, will go on largely unchanged. **In essence the changes are to remove the need for local highways authorities in England to submit applications either for new schemes or to vary or revoke existing permit schemes, to the Secretary of State for formal approval.**

**2.11** The approval role will be transferred to authorities, who will not only need to continue to consult on their proposal for scheme introduction or variation, but also to evaluate their schemes and make that evaluation transparent - a strengthening of requirements around the transparency of schemes is also being considered and consulted on, which would mean authorities will need to publish annual evaluations of their schemes. Authorities will need to consider revoking schemes where they fail to deliver the benefits expected.

**2.12** Given the evidence provided by schemes already operating in England, the Government considers that the current centrally undertaken assessment and approval role is overly bureaucratic and that English authorities currently developing and

operating schemes are best placed to develop and introduce, change and if appropriate terminate schemes to meet local needs. The existing role for Welsh Ministers in relation to any Welsh authority deciding to develop such a scheme remains unchanged.

**2.13** These proposals are being brought forward now in line with Government policy on localism. Local authorities would in future be able to be self determining as to when they chose to bring forward permit schemes and the nature of those schemes (within the Regulations), without reference to central government.

**2.14** To assist local evaluation of schemes it is proposed that there will no longer be the need for formal assessment using the specific key performance indicators (KPIs), set out in Traffic Management Act 2004 Code of Practice for Permits – Procedures and Guidance Chapter 20 (see Addendum E). Instead authorities will be able to monitor and measure those indicators that best reflect the aims and context of the local scheme. All schemes (even those already approved by the Secretary of State) would be subject to the need for annual evaluation of their permit scheme.

**2.15** The proposed changes fall under section 1 of the Legislative and Regulatory Reform Act. It is considered that the best way to reduce the current administrative burden both to the Secretary of State and local authorities, enabling local authorities to develop schemes within the new system as quickly as possible is to use a Legislative Reform Order.

**2.16** The response form set out as a word document on the Departments website (shown as Addendum C) provides specific questions covering both the proposal and the use of an LRO. We would appreciate your views on all the issues raised. Once this consultation exercise is concluded the Department will introduce any amendments decided on, to both TMA and the Regulations, revisions to the statutory guidance will be provided as soon as practical .

## Benefits of the proposed change:

**2.17** Firstly there will be a direct cost saving to the Department - the current approval process costs approximately £9,000 for each scheme. Further information on this can be found in the initial impact assessment at Addendum D.

**2.18** Local authorities would in future be able to introduce schemes to a timetable that best meets local needs to assist the management of the road network - without the need for Ministerial approval and without undertaking the additional administrative work of preparing and submitting applications to the Secretary of State. They will also not be requested to undertake the same work if a permit scheme needs to be varied or revoked.

**2.19** Changes to the mandatory nature of specific key performance indicators for permit schemes will enable authorities to implement an evaluation process that can best demonstrate locally how the permit scheme is working, rather than being required to report on potentially inappropriate indicators. Following evaluation authorities will be able to make amendments to their schemes without further reference to the Secretary of State.

## What will not change?

**2.20** The position in relation to Wales will not change, nor is it proposed to remove the power of the Secretary of State to make a permit scheme either in relation to ‘royal parks’ or as the highway authority for the strategic road network. It is **not** proposed to alter the Permit Regulations as they relate to permit scheme fees, and the Secretary of State will retain powers to:

- Make regulations about permit schemes. This will preserve a degree of consistency about how schemes operate and provide protection for the interests of utility companies.
- Direct an authority to revoke their scheme if the Secretary of States deems it appropriate, again providing protections for the utility companies.

## Other proposed changes - scheme evaluation and key performance indicators

**2.21** Currently local authorities undertake evaluation of their schemes, based on a set of national key performance indicators (**KPIs**), as set out in Chapter 20 of the Traffic Management Act 2004 Code of Practice for Permits – Procedures and Guidance (see also Addendum E). Two of these KPIs are mandatory. It is proposed that reporting on these mandatory KPIs **will cease to be mandatory**.

**2.22** This does not mean that we are removing the need for scheme evaluation - in fact it is proposed that is would be undertaken annually, but we are proposing local authorities monitor and measure those indicators that best meet local needs in order to demonstrate the effectiveness of their own schemes against its stated aims.

**2.23** Authorities have reported to us that the current KPIs lack flexibility and the information required to produce them can be difficult to collect. In view of this it is proposed that the statutory element is removed, but Authorities can of course still use them, should they choose to do so. This change would enable the sector to work together to develop an annual evaluation that can best demonstrate locally how the permit scheme is working.

**2.24** It is also likely that the KPIs an authority use would develop as experience of operating a permit scheme increases as datasets are built up. Annual evaluation of schemes will assist authorities to make scheme amendments, and to do so without further reference to the Secretary of State. It is anticipated that the results of the proposed amendments to the monitoring and measuring of the statutory KPIs will ensure greater transparency of the effectiveness of permit schemes**.**

**2.25** It is recommended that the KPIs considered are discussed with promoters, and work within HAUC (UK) to develop evaluation measures that could be used is already going forward. There is a question on this proposed change in the response form (Addendum C on the website) and we welcome your feedback.

**2.26** FEES - The Regulations in relation to the fees authorities can apply to permits remain unchanged - they are set out in the TMAR (Regulations 30 (4) (5) and (6)) and in abridged format in Addendum E. **The regulations clearly constrain authorities to ensure that permit fee income cannot be more than necessary to cover the schemes administration costs.**

**2.27** SCHEME DEVELOPMENT – There are already a number of permit schemes in operation or in development, and some authorities are likely to use these to support their own scheme development. We believe there is a role for HAUC (UK) in disseminating best practice and lessons learnt from existing permit schemes, especially as we would seek to promote a degree of consistency between schemes.

**2.28** DEVELOPMENT OF 'TEMPLATE' SCHEMES - We have been made aware that authorities have concerns over the removal of some areas of support provided by the Department during the assessment process. In view of this we are seeking views on whether the provision of ‘template’ schemes might be helpful, and if so, on the best format for them and how they might be developed.

**2.29** CHANGES TO STATUTORY GUIDANCE AND RELATED SUPPORTING DOCUMENTS - We have been made aware that the sector considers there is a need to undertake a detailed review and update of documents that support 'permit scheme'. In view of this we are already working with the relevant HAUC (UK) working group to take this work forward.

## Impact Assessment

**2.30** When considering the introduction of changes to permit schemes the Department considered the impact such a change might have. The initial Impact Assessment can be found at Addendum D.

**2.31** The Department firstly considered the effects of doing nothing - the current process remaining in place. It was concluded that maintaining the current process did not achieve the policy benefits sought. Not making the change would continue to present a burden to the Secretary of State and to authorities who would need to continue to have to undertake the formal application process to the Secretary of State.

**2.32** Authorities do not have to introduce a scheme, but when considering if a permit scheme is right for their area they do not have to decide between either having a permit scheme or having nothing, but rather between having a permit scheme under the 2004 Act or notice requirements under the 1991 Act (or a combination of both these measures). This decision remains one for each authority to make, but the proposals would allow them to implement the best system for there area under their own powers.

**2.33** The Department firstly considered the effects of doing nothing - the current process remaining in place. It was concluded that maintaining the current process did not achieve the policy benefits sought. Not making the change would continue to present a burden to the Secretary of State and limit the ability of local authorities to introduce or vary schemes as needed.

**2.34** Delivering the change would allow for a possible saving to the Department of approximately £9,000 per application and, although cost saving to authorities would be minimal, there would be benefits of increased control and certainty that the scheme introduced fully delivered the needs of each locality and could be introduced to the authority's own timetable, under their own powers without the administrative burden of preparing and submitting applications to the Secretary of State. Additionally it was noted that those applying for permits to undertake street works would incur no additional costs, as the regulations related to fees would remain unchanged (see Addendum E).

**2.35** Therefore it has been concluded that the change is not detrimental to either authorities or those applying for permits, but would provide benefits to the Department and authorities. Where you have comment on the initial Impact Assessment, please include these in your response to the consultation.

## How we propose to make any changes - the Legislative Reform Order

**2.36** The proposal will require changes to primary and secondary legislation. At present Part 3 of the TMA 2004 relates to both England and Wales, but our proposals relate only to the role of the Secretary of State. The National Assembly for Wales retains its existing approval role, as set out in the TMA 2004 and the equivalent Regulations.

**2.37** We propose to introduce the reform by means of a LRO under the 2006 Act and this consultation is conducted in accordance with the provisions of section 13 of the 2006 Act.

**2.38** When proposals are finalised amendments will be made to the Traffic Management Act (by LRO) and to the Regulations (by Statutory Instrument). Corresponding changes will be reflected in revisions to the Guidance and Codes of Practice as soon as is practical, to support the introduction of permit schemes by authorities.

## Background to the use of the Legislative Reform Order (LRO)

**2.39** Details on the use of the LRO are set out in the next chapter (Chapter 3), including parliamentary scrutiny, and the draft LRO is set out at Addendum B in this document (and Appendix B in the booklet of supporting documents).

**2.40** The LRO is a form of statutory instrument which can amend or revoke primary legislation. LROs are used for removing or reducing any burdens which arise in legislation - it is a quicker method of amending primary legislation than having to use another piece of primary legislation. It is made under the powers of the 2006 Act.

**2.41** The 2006 Act lays down several criteria which an LRO must meet and these are set out in Chapter 3. The response questionnaire to this consultation invites your comments on all aspects of the use of the LRO

**2.42** When, in the light of this consultation, the Government has finalised its proposals, any LRO will be laid before Parliament for approval. The Government's intention, subject to Parliamentary approval, is for changes to come into force as soon as possible in 2012. The draft LRO would then be used to amend TMA 2004. Corresponding amendments would also be made to the Permit Regulations and related guidance.

## Planned changes to the TMA and related documents

**2.43** Should the proposal be introduced there will need to be amendments to TMA 2004 part 3 sections 33 to 39. The most significant sections to be amended are as follows:

- Section 33 - this covers the preparation of permit schemes –This relates to the requirement to submit permit schemes for approval to the Secretary of State. To be amended to enable local highway authorities to make their own schemes by Orders executed by the authority itself.

- Section 34 This covers the implementation of permit schemes and the way in which permit schemes are considered and approved by the Secretary of State and Welsh National Assembly - As this section deals with what the Secretary of State or National Assembly must do when they receive a scheme application this will now only apply to Wales.

- Section 36: Variation and revocation of permit schemes - this deals with the power for the Secretary of State or the Welsh National Assembly to make or revoke a scheme by Order - This will be amended to remove the requirement that the Secretary of State must vary or revoke schemes. Local highway authorities in England will be able to do so themselves by local order. We propose to insert into the TMA 2004 the power for the Secretary of State to direct local highway authorities to revoke a scheme whether that scheme has been approved by the Secretary of State or by the local highway authority.

**2.44** Should the proposal be implemented in full or with amendments there will undoubtedly be some permit schemes which will have been either already approved by the

Secretary of State or be waiting for that approval. In order to achieve a seamless transition for these schemes it is planned that the following will apply:

- Schemes already in operation having received statutory instrument to operate – will continue as though they had been approved by an authorities own powers.
- Where schemes are going through the approval process, but not yet given effect to by statutory instrument - we will hold discussion on transitional arrangements with them on an individual basis.

**2.45** To ensure continuity it is planned that any permit which a utility has applied, received and paid for from an authority approved under the current regime will still have effect after the change date in exactly the same way.

# 3. The Legislative and Regulatory Reform Act 2006 ("the 2006 Act") - (enables the use of the Legislative Reform Order (LRO))

**3.1** This chapter sets out detailed information on both the use of the LRO, what can be delivered by an LRO, and the process that will need to be followed to introduce any change to primary legislation using this method. It also explains the safeguards set out in the 2006 Act and will give consultees the information they require to assess whether the proposals meet these criteria.

**3.2** A LRO is a statutory instrument made under the powers of the 2006 Act, which can amend primary legislation.

**3.3** What can be delivered by an LRO?

## Section 1 of the 2006 Act

**3.4** Under section 1 of the 2006 Act a Minister can make a LRO for the purpose of 'removing or reducing any burden, or overall burdens, resulting directly or indirectly for any person from any legislation'.

**3.5** Section 1(3) of the 2006 Act defines a 'burden' as:

- a financial cost;
- an administrative inconvenience;
- an obstacle to efficiency, productivity or profitability; or
- a sanction, criminal or otherwise, which affects the carrying on of any lawful activity.

## Section 2

**3.6** Under section 2 of the 2006 Act a Minister can make a LRO for the purpose of securing that regulatory activities are exercised in a way that is transparent, accountable, proportionate, consistent, and targeted only at cases in which action is needed. 'Regulatory functions' is defined in section 32 as:

- a function under any enactment of imposing requirements, restrictions or conditions, or setting standards or giving guidance, in relation to any activity; or
- a function which relates to the securing of compliance with, or the enforcement of, requirements, restrictions, conditions, standards or guidance which under or by virtue of any enactment relate to any activity.

“Section 20 Orders"

**3.7** Section 20 of the 2006 Act enables a Minister to exercise the order-making powers under sections 1 and 2 together with the power to make an order under section 2(2) of the European Communities Act 1972 in a single instrument. This enables a single order to implement Community law under section 2(2) of the 1972 Act and, for example, to remove or reduce burdens resulting from pre-existing statutory provisions.

## Preconditions

**3.8** Each proposal for a LRO must satisfy the preconditions set out in section 3 of the 2006 Act. The questions in the rest of this document are designed to elicit the information that the Minister will need in order to satisfy the Parliamentary Scrutiny Committees that, among other things, the proposal satisfies these preconditions. For this reason, we would particularly welcome your views on whether and how each aspect of the proposed changes in this consultation document meets the following preconditions:

- Non-Legislative Solutions – A LRO may not be made if there are non-legislative solutions which will satisfactorily remedy the difficulty which the LRO is intended to address. An example of a non-legislative solution might be issuing guidance about a particular legislative regime.
- Proportionality – The effect of a provision made by a LRO must be proportionate to its policy objective. A policy objective might be achieved in a number of different ways, one of which may be more onerous than others and may be considered to be a disproportionate means of securing the desired outcome. Before making a LRO the Minister must consider that this is not the case and that there is an appropriate relationship between the policy aim and the means chosen to achieve it.
- Fair Balance – Before making a LRO, the Minister must be of the opinion that a fair balance is being struck between the public interest and the interests of any person adversely affected by the LRO. It is possible to make a LRO which will have an adverse effect on the interests of one or more persons only if the Minister is satisfied that there will be beneficial effects which are in the public interest.
- Necessary protection - A Minister may not make a LRO if he considers that the proposals would remove any necessary protection. The notion of necessary protection can extend to economic protection, health and safety protection, and the protection of civil liberties, the environment and national heritage.
- Rights and freedoms - A LRO cannot be made unless the Minister is satisfied that it will not prevent any person from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise. This condition recognises that there are certain rights that it would not be fair to take away from people using a LRO. We do not believe that the proposed changes would prevent anyone from exercising an existing right or freedom. We would welcome your views as to whether we are correct in thinking that our proposals do not remove any rights or freedoms that anyone could reasonably expect to continue to enjoy.

- Constitutional Significance – A Minister may not make a LRO if he considers that the provision made by the LRO is of constitutional significance.

**3.9** It should be noted that even where the preconditions of section 3 of the 2006 Act are met, a LRO cannot:

- Deliver 'highly controversial proposals;
- Remove burdens which fall solely on Ministers or Government departments, except where the burden affects the Minister or Government department in the exercise of regulatory functions;
- Confer or transfer any function of legislating on anyone other than a Minister; persons or bodies that have statutory functions conferred on or transferred to them by an enactment; a body or office which has been created by the LRO itself;
- impose, abolish or vary taxation;
- Create a new criminal offence or increase the penalty for an existing offence so that it is punishable above certain limits;
- Provide authorisation for forcible entry, search or seizure, or compel the giving of evidence;
- Amend or repeal any provision of Part 1 of the 2006 Act;
- Amend or repeal any provision of the Human Rights Act 1998;
- Remove burdens arising solely from common law.

**3.10** There are specific questions on which we are seeking your views, in relation to the LRO set out in the questionnaire.

## Devolution

**3.11** The 2006 Act imposes certain restriction regarding LROs and the devolution agreements:

- Scotland – A Minister cannot make a LRO under Part 1 of the 2006 Act which would be within the legislative competence of the Scottish Parliament. This does not affect the powers to make consequential, supplementary, incidental or transitional provisions.

- Northern Ireland – A Minister cannot make a LRO under Part 1 of the 2006 Act that amends or repeals any Northern Ireland legislation, unless it is to make consequential, supplementary, incidental or transitional provisions.

- Wales – The agreement of the Welsh Ministers is required for any provision in a LRO which confers a function upon the Welsh Ministers, modifies or removes a function of the Welsh Ministers, or restates a provision conferring a function upon the Welsh Ministers. The agreement of the National Assembly for Wales is required for any provision in a LRO which is within the legislative competence of the Assembly.

# LEGAL ANALYSIS - against the requirements of the Legislative and Regulatory Reform Act 2006

## The Proposal

**3.12** At 2.9 the proposed change to be brought about by the LRO was stated as:

"This Consultation document seeks views on the proposal (which relates to England only) for the cessation of the requirement for the Secretary of State to assess and approve a highway authority or highway authorities application, to develop and implement and revise or halt permit schemes. "

**3.13** What follows is a legal analysis of the proposal itself and the way in which the proposal meets the requirements for a LRO as set out above.

## Non-Legislative Solutions

**3.14** To satisfy this condition, it must be shown that the policy aim cannot be secured by non-legislative means-that is, without use of either secondary or primary legislation (Acts of Parliament). The cessation of the requirement for the Secretary of State to approve permit schemes cannot be achieved unless the sections of the Traffic Management Act which require this are actually amended. An Act of Parliament can only be amended by either another Act of Parliament or Secondary legislation, such as the LRO. Therefore, the policy aim cannot be achieved without the use of legislation.

## Proportionality and Fair Balance

**3.15** As stated above, the policy aim is to enable local highway authorities to make their own permit schemes and give effect to them by their own orders. To satisfy this condition the policy aim itself must be proportionate to whatever or whoever that policy affects. In enabling local highway authorities to make their own schemes, the LRO will have some limited impact on the way that those authorities prepare permit schemes as they will now have to provide for their own orders to give effect to schemes rather than the Secretary of State making Orders. However, it will also release them from having to prepare applications to the Secretary of State. Furthermore, the LRO is limited to making only those changes necessary to bring about the policy aim. Accordingly, the LRO meets this criterion.

**3.16** Accordingly, it is also the case that whilst the LRO will bring about limited changes to local authority procedures the policy achieves a fair balance between the policy aim of pursuing localism and reducing the burden on the Secretary of State on the one hand and the impacts of those changes on local highway authorities.

## Necessary Protections

**3.17** This criteria is also met by virtue of the requirements contained in both the TMA 2004 and the Permit Regulations which will continue to apply to local highway authorities wishing to make permit schemes. The Permit Regulations set out requirements for the process for making permit schemes (consultation and notification to appropriate persons) as well as the criteria for the content of permit schemes. The latter requirement will ensure that permit schemes are consistent in content and quality. Section 33(5) of the TMA 2004 requires those preparing permit schemes to comply with the Permit Regulations and to have regard to any guidance on permit schemes.

**3.18** The Secretary of State will maintain the power under section 37 of the TMA 2004 to make Permit Regulations and to issue guidance. In addition, the Secretary of State will

retain a power to direct a local highway authority to revoke a permit scheme. Accordingly, sufficient protections are retained.

## Rights and Freedoms

**3.19** As the changes we propose are purely beneficial we do not believe that they would prevent anyone from exercising any right or freedom.

**3.20** We would welcome your views as to whether we are correct in thinking that our proposals do not remove any rights or freedoms that anyone could reasonably expect to continue to enjoy.

**3.21** Constitutional significance - the policy aim is not of constitutional significance.

## Planned Consequential Amendments to the Permit Regulations -

## The Traffic management (Permit Scheme) (England) (Amendment) Regulations 2012 ("the Amendment Regulations")

**3.22** Although the LRO amends the TMA, we will also need to make amendments to the Permit Regulations to remove the requirements of the Secretary of State to approve permit schemes. The Permit Regulations lay down requirements for the approval and content of permit schemes. Currently in particular, they require:

- Consultation on the contents of a proposed scheme (regulation 3)
- procedural requirements for submitting a scheme to the Secretary of State (regulation 4)
- requirements for the content of permit schemes (regulations 6-16)
- requirements for publishing an approved scheme (regulation 17); and
- sanctions for undertaking unauthorised works (regulations 18-28)

## Amendments to the above areas are given below

**3.23** Whereas, currently the requirement to consult on a proposed scheme is undertaken when a scheme is submitted to the Secretary of State, it will be amended so that the consultation still takes place when a permit authority makes an order giving effect to a permit scheme.

**3.24** The procedural requirements for submitting a permit scheme to the Secretary of State require that the permit authority include details such as the objectives of the permit scheme, how the permit authority will measure whether the objectives have been met, the anticipated costs and benefits of the permit scheme. The reference to submitting this information to the Secretary of State will be replaced with a requirement that, when an order giving effect to the scheme is made, the same information is published so that any interested parties can obtain that information about the permit scheme.

**3.25** The requirements for the content of permit schemes or permits issued under those schemes will not be amended. Neither will we be amending sanctions. Therefore,

**3.26** Currently, it is a requirement that the parties notified as part of the consultation process before the permit scheme was approved must to be notified when the Secretary of State makes an order giving effect to that scheme. That notification requirement will be retained but will be amended so that when a permit authority makes an order giving effect to its own permit scheme it will notify those same persons.

**3.27** In addition to amendments to reflect the fact that permit schemes will be made by permit authorities we will also insert an additional requirement into the Permit Regulations. This will be a new regulation 4(2) which will require permit authorities to conduct an evaluation of their own schemes after they have been in operation for twelve months. They are then to publish those results as soon as reasonably practicable.

**3.28** We invite comments on these Regulations as set out in the response form.

## Consultation

**3.29** The 2006 Act requires Departments to consult widely on all LRO proposals. This consultation has been provided via the website to devolved administrations and all stakeholders. Further copies and a copy of the booklet of additional documents are available on the Internet at: www.dft.gov.uk.

**3.30** Comments are invited from all interested parties, and not just from those to whom the document has been sent. A response form is at Addendum C. The above will help consultees understand when and to whom they are able to put their views should they wish to do so. This consultation document follows the basic format recommended by the BRE for such proposals. The criteria applicable to all UK public consultations under the BRE Code of Practice on Consultation are set out in Addendum B.

**3.31** This document and the responses received are part of the consultation on the proposed changes. We seek as wide and detailed a response as possible and welcome your comments, not only on the questions asked, but on wider issues you consider are covered by the proposed changes. Please provide your responses to specific questions on the response form provided, but please do not consider you are limited to responding on those question – all responses will be considered fully.

## Disclosure

**3.32** Normal practice will be for details of representations received in response to this consultation document to be disclosed, and for respondents to be identified. While the 2006 ACT provides for non-disclosure of representations, the Minister will include the names of all respondents in the list submitted to Parliament alongside the draft LRO. The Minister is also obliged to disclose any representations that are requested by, or made to, the relevant Parliamentary Scrutiny Committees. This is a safeguard against attempts to bring improper influence to bear on the Minister. We envisage that, in the normal course of events, this provision will be used rarely and only in exceptional circumstances.

**3.33** You should note that:

- If you request that your representation is not disclosed, the Minister will not be able to disclose the contents of your representation without your express consent and, if

the representation concerns a third party, their consent too. Alternatively, the Minister may disclose the content of your representation but only in such a way as to anonymise it.

- In all cases where your representation concerns information on a third party, the Minister is not obliged to pass it on to Parliament if he considers that disclosure could adversely affect the interests of that third party and he is unable to obtain the consent of the third party. Please identify any information which you or any other person involved do not wish to be disclosed. You should note that many facsimile and e-mail messages carry, as a matter of course, a statement that the contents are for the eyes only of the intended recipient. In the context of this consultation such appended statements will not be construed as being requests for non-inclusion in the post consultation review unless accompanied by an additional specific request for confidentiality, such as an indication in the tick-box provided for that purpose in the response form.

## Confidentiality and Freedom of Information

**3.34** It is possible that requests for information contained in consultation responses may be made in accordance with access to information regimes (these are primarily the Freedom of Information Act 2000, the Data Protection Act 1998 and the Environmental Information Regulations 2004). If you do not want your response to be disclosed in response to such requests for information, you should identify the information you wish to be withheld and explain why confidentiality is necessary. Your request will only be acceded to if it is appropriate in all the circumstances. An automatic confidentiality disclaimer generated by your IT system will not of itself be regarded as binding on the Department.

## Responding to the Consultation Document

**3.35** Any comments on the proposals in this consultation document should be sent to the email address above, by the above date. Further copies of this document can be found at www.dft.gov.uk.

# Legislative Reform Orders - Parliamentary Consideration

## Introduction

**3.36** These reform proposals in relation to TMA will require changes to primary legislation in order to give effect to them. The Minister could achieve these changes by making a Legislative Reform Order (LRO) under the Legislative and Regulatory Reform Act 2006 (2006 ACT). LROs are subject to preliminary consultation and to rigorous Parliamentary scrutiny by Committees in each House of Parliament. On that basis, the Minister invites comments on these reform proposals.

## Legislative Reform Proposals

**3.37** This consultation document on permit schemes has been produced because the starting point for LRO proposals is thorough and effective consultation with interested parties. In undertaking this preliminary consultation, the Minister is expected to seek out actively the views of those concerned, including those who may be adversely

affected, and then to demonstrate to the Scrutiny Committees that he or she has addressed those concerns.

**3.38** Following the consultation exercise, when the Minister lays proposals before Parliament under the section 14 Legislative and Regulatory Reform Act 2006, he or she must lay before Parliament an Explanatory Document which must:

- Explain under which power or powers in the 2006 ACT the provisions contained in the order are being made;
- Introduce and give reasons for the provisions in the Order;

**3.39** Explain why the Minister considers that:

- There is no non-legislative solutions which will satisfactorily remedy the difficulty which the provisions of the LRO are intended to address;
- The effect of the provisions are proportionate to the policy objective;
- The provisions made in the order strikes a fair balance between the public interest and the interests of any person adversely affected by it;
- The provisions do not remove any necessary protection;
- The provisions do not prevent anyone from continuing to exercise any right or freedom which they might reasonably expect to continue to exercise;
- The provisions in the proposal are not constitutionally significant; and
- Where the proposals will restate an enactment, it makes the law more accessible or more easily understood.
- Include, so far as appropriate, an assessment of the extent to which the provision made by the order would remove or reduce any burden or burdens;
- Identify and give reasons for any functions of legislating conferred by the order and the procedural requirements attaching to the exercise of those functions; and
- Give details of any consultation undertaken, any representations received as a result of the consultation and the changes (if any) made as a result of those representations.

**3.40** On the day the Minister lays the proposals and explanatory document, the period for Parliamentary consideration begins. This lasts 40 days under negative and affirmative resolution procedure and 60 days under superaffirmative resolution procedure. If you want a copy of the proposals and the Minister's explanatory document laid before Parliament, you will be able to get them either from the Government department concerned or by contacting the BRE: http://www.berr.gov.uk/lros

## Parliamentary Scrutiny

**3.41** Both Houses of Parliament scrutinise legislative reform proposals and draft LROs. This is done by the Regulatory Reform Committee in the House of Commons and the Delegated Powers and Regulatory Reform Committee in the House of Lords.

**3.42** Standing Orders for the Regulatory Reform Committee in the Commons stipulate that the Committee considers whether proposals:

- appear to make an inappropriate use of delegated legislation;

- serve the purpose of removing or reducing a burden, or the overall burdens, resulting directly or indirectly for any person from any legislation (in respect of a draft Order under section 1 of the Act);
- serve the purpose of securing that regulatory functions are exercised so as to comply with the regulatory principles, as set out in section 2(3) of the Act (in respect of a draft Order under section 2 of the Act);
- secure a policy objective which could not be satisfactorily secured by non-legislative means;
- have an effect which is proportionate to the policy objective;
- strike a fair balance between the public interest and the interests of any person adversely affected by it;
- do not remove any necessary protection;
- do not prevent any person from continuing to exercise any right or freedom which that person might reasonably expect to continue to exercise;
- are not of constitutional significance;
- make the law more accessible or more easily understood (in the case of provisions restating enactments);
- have been the subject of, and takes appropriate account of, adequate consultation;
- give rise to an issue under such criteria for consideration of statutory instruments laid down in paragraph (1) of Standing Order No 151 (Statutory Instruments (Joint Committee)) as are relevant, such as defective drafting or failure of the department to provide information where it was required for elucidation; (m) appear to be incompatible with any obligation resulting from membership of the European Union;

**3.43** The Committee in the House of Lords will consider each proposal in terms of similar criteria, although these are not laid down in Standing Orders. Each Committee might take oral or written evidence to help it decide these matters, and each Committee would then be expected to report.

**3.44** Copies of Committee Reports, as Parliamentary papers, can be obtained through HMSO. They are also made available on the Parliament website at Regulatory Reform Committee in the Commons; and Delegated Powers and Regulatory Reform Committee in the Lords.

**3.45** Under negative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise a LRO, after which the Minister can make the order if neither House of Parliament has resolved during that period that the order should not be made or to veto the LRO.

**3.46** Under affirmative resolution procedure, each of the Scrutiny Committees is given 40 days to scrutinise a LRO, after which the Minister can make the order if it is not vetoed by either or both of the Committees and it is approved by a resolution of each House of Parliament.

**3.47** Under super-affirmative procedure each of the Scrutiny Committees is given 60 days to scrutinise the LRO. If, after the 60 day period, the Minister wishes to make the order with no changes, he may do so only after he has laid a statement in Parliament giving details of any representations made and the LRO is approved by a resolution of each House of Parliament. If the Minister wishes to make changes to the draft LRO he must lay the revised LRO and as well as a statement giving details of any representations made during the scrutiny period and of the proposed revisions to the order, before Parliament. The Minister may only make the order if it is approved by a resolution of

each House of Parliament and has not been vetoed by either or both relevant Committees. The Department for Transport believes that the affirmative resolution procedure provides the necessary degree of Parliamentary scrutiny in that the draft LRO will need to receive positive approval of both Houses of Parliament.

## How to Make Your Views Known

**3.48** Responding to this consultation document is your first and main opportunity to make your views known to the relevant department as part of the consultation process. You should send your views to the person named in the consultation document by email to Permit.Schemes@dft.gsi.gov.uk or printed and returned by post to:-

Ann Morley

Permit Scheme Approval Process Consultation

Zone 3/26 Department for Transport

Great Minster House

33 Horseferry Road

London SW1P 4DR

**3.49** When the Minister lays proposals before Parliament you are welcome to put your views before either or both of the Scrutiny Committees. In the first instance, this should be in writing. The Committees will normally decide on the basis of written submissions whether to take oral evidence. Your submission should be as concise as possible, and should focus on one or more of the criteria listed above.

**3.50** The Scrutiny Committees appointed to scrutinise Legislative Reform Orders can be contacted at:

Delegated Powers and Regulatory Reform Committee
House of Lords
London SW1A 0PW
Tel: 0207 219 3103 / Fax: 0207 219 2571 / mail to: DPRR@parliament.uk

Regulatory Reform Committee
House of Commons
7 Millbank
London SW1P 3JA
Tel: 020 7219 2830 /4404/ 2837
Fax: 020 7219 2509 / mail to: regrefcom@parliament.uk

## Non-disclosure of responses

Section 14(3) of the 2006 ACT provides what should happen when someone responding to the consultation exercise on a proposed LRO requests that their response should not be disclosed.

The name of the person who has made representations will always be disclosed to Parliament. If you ask for your representation not to be disclosed, the Minister should not disclose the content of that representation without your express consent and, if the representation relates to a third party, their consent too. Alternatively, the Minister may disclose the content of the representation in such a way as to preserve your anonymity and that of any third party involved.

## Information about Third Parties

If you give information about a third party which the Minister believes may be damaging to the interests of that third party, the Minister does not have to pass on such information to Parliament if he does not believe it is true or he is unable to obtain the consent of the third party to disclose. This applies whether or not you ask for your representation not to be disclosed.

The Scrutiny Committees may, however, be given access on request to all representations as originally submitted, as a safeguard against improper influence being brought to bear on Ministers in their formulation of legislative reform orders.

# Addendum A

## Code of Practice on Consultation

The Government has adopted a Code of Practice on consultations. The Code sets out the approach Government will take to running a formal, written public consultation exercise. While most UK Departments and Agencies have adopted the Code, it does not have legal force, and cannot prevail over statutory or other mandatory external requirements (e.g. under European Community Law).

The Code contains seven criteria. Deviation from the code will at times be unavoidable, but the Government aims to explain the reasons for deviations and what measures will be used to make the exercise as effective as possible in the circumstances.

## The seven consultation criteria are:

- When to consult: Formal consultation should take place at a stage when there is scope to influence the policy outcome.
- Duration of consultation exercises: Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
- Clarity of scope and impact: Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
- Accessibility of consultation exercises: Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
- The burden of consultation: Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
- Responsiveness of consultation exercises: Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
- Capacity to consult: Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

A full version of the code of practice is available on the Better Regulation Executive web-site at: http://www.bis.gov.uk/files/file47158.pdf

If you consider that this consultation does not comply with the criteria or have comments about the consultation process please contact: Giada Covallero, Consultation Co-ordinator, Department for Transport, Zone 5/23 Great Minster House, 33 Horseferry Road, London, SW1P 4DR. email: consultation@dft.gsi.gov.uk

# ADDENDUM B

## THE LEGISLATIVE REFORM (PERMIT SCHEMES) ORDER 2012

## The Legislative Reform Order

It should be stressed that this document is in draft form (it is not a legal document) and is subject to change and amendment following the consultation exercise and subsequent consideration of the responses.

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S T A T U T O R Y  I N S T R U M E N T S

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**2012 No.**

**REGULATORY REFORM**

*Made - - - -* *2012*

*Coming into force -* *- 2012*

The Secretary of State for Transport ("the Secretary of State") makes the following Order, in exercise of the powers conferred by section 1 of the Legislative and Regulatory Reform Act 2006([1]) ("the 2006 Act").

For the purposes of section 3(1) of the 2006 Act, the Secretary of State considers that, where relevant, the conditions under section 3(2) are satisfied.

Agreement to the making of the Order has been given by the National Assembly for Wales in accordance with section 11(1) of the 2006 Act and by the Welsh Ministers in accordance with section 11(2)(c) of the 2006 Act.

The Secretary of State has consulted in accordance with section 13(1) of the 2006 Act.

## 1. ———————

([1]) 2006. c.51. . Sections 1, 4, 11, 13, 24 and 27 of that Act have been amended by S.I.2007/1388.

The Secretary of State has laid a draft of this Order and an explanatory document before Parliament in accordance with section 14(1) of the 2006 Act.

Pursuant to section 15 of the 2006 Act, the affirmative resolution procedure (within the meaning of Part 1 of the 2006 Act) applies to the making of this Order.

Pursuant to section 17(2) of the 2006 Act, the draft of this Order has been approved by resolution of each House of Parliament after the expiry of the 40 day period referred to in that provision.

PART 1

General provisions

**Citation, commencement and extent**

**1.**—(1) This Order may be cited as the Legislative Reform (Permit Schemes) Order 2012.

(2) This Order comes into force on the day after the day on which it is made.

(3) This Order extends to England and Wales.

**Interpretation**

**2.** In this Order—

"the 2004 Act" means the Traffic Management Act 2004([2]); and

"the Permit Scheme Regulations" mean the Traffic Management Permit Scheme (England) Regulations 2007([3]).

PART 2

Amendments to Part 3 of the 2004 Act

**Amendments to the 2004 Act**

**3.** Part 3 of the 2004 Act is amended as set out in Articles 4 to 9.

**Preparation of permit schemes**

**4.**—(1) Section 33 (preparation of permit schemes) is amended as follows.

(2) For subsection (1), substitute—

"(1) A local highway authority in England, or two or more such authorities acting together, may prepare a permit scheme.

(1A) A local highway authority in Wales, or two or more such authorities acting together, may prepare and submit to the Welsh Ministers a permit scheme."

(3) For subsection (2) substitute—

1. ———————

([2]) 2004 c.18.
([3]) S.I. 2007/3372.

"(2) The Welsh Ministers may direct a local highway authority in Wales, or two or more such authorities acting together, to prepare and submit to them a permit scheme which takes such form as the Welsh Ministers may direct."

**Implementation of local highway authority permit schemes**

**5.** After section 33, insert—

"**Implementation of local highway authority permit schemes: England**

**33A**—(1) This section applies to a permit scheme prepared by a local highway authority in England, or two or more such authorities acting together, under section 33(1).

(2) The scheme shall not have effect in the area of the local highway authority unless the authority gives effect to it by order.

(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."

**6.**—(1) Section 34 of the 2004 Act (implementation of local highway authority permit schemes) is amended as follows.

(2) In subsection (1)—

(a) after "prepared" insert "by a local highway authority, or two or more such authorities acting together, in Wales,";

(b) for "appropriate national authority ("the authority")" substitute "Welsh Ministers"; and

(c) for "33(1)" substitute "33(1A)".

(3) In subsection (2) for "authority" substitute "Welsh Ministers".

(4) In subsection (3), for "it approves" substitute "the Welsh Ministers approve".

(5) In subsection (4), for "the authority by order gives" substitute "the Welsh Ministers by order give".

(6) In the heading, at the end insert ": Wales".

**Variation and revocation of permit schemes**

**7.** For section 36 (variation and revocation of permit schemes), substitute—

**"36.**—(1) A local highway authority in England may by order vary or revoke a permit scheme prepared by them which for the time being has effect under section 33A(2).

(2) The Secretary of State may direct a local highway authority in England to revoke such a permit scheme by an order under subsection (1).

(3) An order made by a local highway authority under subsection (1) may vary or revoke an order made by the authority under section 33A(2), or an order previously made by the authority under subsection (1).

(4) The Welsh Ministers may by order vary or revoke any permit scheme which for the time being has effect by virtue of an order made by them under section 34(4) or 35(2).

(5) An order under subsection (4) may vary or revoke an order made by the Welsh Ministers under section 34(4) or 35(2), or an order previously made under subsection (4).

(6) The Secretary of State may by order vary or revoke any permit scheme which for the time being has effect by virtue of an order made by the Secretary of State under section 35(2).

(7) An order under subsection (6) may vary or revoke an order made by the Secretary of State under section 35(2), or an order previously made under subsection (6).

(8) An order under subsection (4) or (6) may relate to one or more permit schemes.

(9) An order under this section may (in accordance with permit regulations) include provisions which disapply or modify enactments to the extent specified in the order."

**Permit regulations**

**8.**—(1) Section 37 (permit regulations) is amended as follows.

(2) In section 37(1)—

(a) for "appropriate national authority" substitute "Secretary of State";

(b) omit "submission, approval,"; and

(c) at the end insert "prepared by local highway authorities in England under section 33(1) or by the Secretary of State under section 33(3) or (4)".

(3) After subsection (1) insert—

"(1A) The Welsh Ministers may by regulations ("permit regulations") make provision with respect to the content, preparation, submission, approval, operation, variation or revocation of permit schemes prepared by local highway authorities in Wales under section 33(1A) or (2) or by the Welsh Ministers under section 33(3)."

**Interpretation of Part 3**

**9.**—(1) Section 39 (interpretation of Part 3) is amended as follows.

(2) In subsection (1), in paragraph (b) of the definition of "the appropriate national authority", for "National Assembly for Wales", substitute "Welsh Ministers".

(3) In subsection (3) after "power" insert "of the Secretary of State or the Welsh Ministers".

PART 3

Transitional provisions

**Transitional Provisions**

**10.**—(1) This article applies to a permit scheme prepared by a local highway authority in England which has effect immediately before the date on which this Order comes into force by virtue of an order under section 34(4) of the 2004 Act made by the Secretary of State.

(2) On and after that date, the scheme is to be treated as if it had effect by virtue of an order made by the authority under section 33A(2) of that Act.

Signed by authority of the Secretary of State for Transport

Parliamentary Under Secretary of State

## EXPLANATORY NOTE

*(This note is not part of the Order)*

This Order amends Part 3 of the Traffic Management Act 2004 ("the 2004 Act").

*Article 4* amends section 33 of the 2004 Act (preparation of permit schemes) to remove the requirement on local highway authorities to submit a permit scheme to the Secretary of State for approval following preparation of such a scheme. It also removes the power for the Secretary of State to direct a local highway authority to prepare and submit a permit scheme to the Secretary of State for approval, but retains this power for the Welsh Ministers. It also substitutes a new power for local highway authorities, acting alone or together, to prepare a permit scheme.

*Article 5* inserts a new section 33A into the 2004 Act (implementation of local authority permit schemes: England) which makes provision for how local highway authority permit schemes are to come into effect. Article 33A(2) provides that permit schemes will not have effect in the area of a local highway authority unless given effect to by an order of that authority. Section 33A(3) provides for the content of such orders.

*Article 6* removes the requirement for the Secretary of State under section 34(2) of the 2004 Act (implementation of local authority permit schemes) to approve a submitted local highway authority permit scheme. It also removes the Secretary of State's power under section 34(4) to give effect to a permit scheme by order, but retains the requirement that permit schemes from Welsh local highway authorities are submitted, approved and given effect to by the Welsh Ministers.

*Article 7* substitutes a new section 36 of the 2004 Act (variation and revocation of permit schemes) providing for the removal of the power of the Secretary of State under section 36(1) to vary or revoke a local highway authority permit scheme and substituting a new power for local highway authorities to vary or revoke their own permit schemes by order and to vary or revoke an order which gives effect to a permit scheme. The new section 36 also introduces a power for the Secretary of State to direct a local highway authority to revoke its own permit scheme by order. The requirement that permit schemes from Welsh local highway authorities are varied or revoked by order of the Welsh Ministers is retained, as is the right for the Secretary of State or Welsh Ministers to vary or revoke permit schemes made by them under section 33(3) or 33(4).

*Article 8* Amends section 37 of the 2004 Act which provides the power to make regulations in relation to permit schemes. Section 37(1) is amended to remove the power for the Secretary of State to make regulations concerning the submission and approval of permit schemes. .A new sub-section 1(A) provides for Welsh Ministers to continue to make regulations with regards to, amongst other things, the submission and approval of permit schemes.

*Article 9* amends section 39 of the 2004 Act (interpretation) by changing the definition of appropriate national authority as respects Wales. It also amends section 39(3) to clarify that a power to make orders or regulations by the Secretary of State or Welsh Ministers is exercisable by statutory instrument.

*Article 10* deals with transitional provisions and provides that any permit schemes which were approved by the Secretary of State shall be treated as if they had been given effect to by an order of the relevant local highway authority.

A full regulatory impact assessment of the effect that this instrument will have on the costs of business and the voluntary sector is annexed to the Explanatory Memorandum which is available alongside the instrument on www.legislation.gov.uk.

# Addendum C

## Consultation Response Proforma - provided separately on the web in word format for ease of response.

**It should be noted that the link to this consultation has been provided to:**

**- Local Highway Authorities**

**- District and Borough Authorities**

**- Utilities Companies and contractors**

**- Authority and Industry representative organisations and associations**

**- Road user and other interested groups**

# Addendum D

## Initial Impact Assessment

| Title: | Impact Assessment (IA) |
|---|---|
| **Local Highway Authority Permit Scheme – amendment to approval process under Part 3 of 2004 Traffic Management Act**<br>Lead department or agency:<br>Department for Transport<br>Other departments or agencies:<br>Nil | IA No:<br>DfT Internal<br>Date: 11/07/2011<br>Stage: Consultation<br>Source of intervention: Domestic<br>Type of measure: Primary legislation<br>Contact for enquiries:<br>ann.morley@dft.gsi.gov.uk |

## Summary: Intervention and Options

**What is the problem under consideration? Why is government intervention necessary?**
The Traffic Management Act 2004 (TMA) introduced 'permit schemes', by which local highways authorities could develop a scheme to provide 'permits' to those who wished to undertake street works. Permit Schemes provide for better management of the highway and can result in reducing congestion.

For schemes to be effective authorities have to submit an application and obtain formal approval from the Secretary of State. Such approval does not directly effect either local authority traffic management or costs to utilities seeking permits and the Government considers

**What are the policy objectives and the intended effects?**
Devolving this power from Central government to local government – enabling authorities in England to take the final decision to implement a scheme – would remove an unnecessary requirement for central government to intervene in local decisions, it would also provide for authorities being able to give effect to locally developed schemes.

Overall the change would reduce authority costs as there would no longer be a need to prepare documents for assessment and submission to the Secretary of State. It will also reduce the cost of the assessment process to the Secretary of State.

**What policy options have been considered, including any alternatives to regulation? Please justify preferred option (further details in Evidence Base)**
Do nothing.

or
Option - Amend primary and secondary legislation to remove the requirement that permit schemes are submitted by local highway authorities to the Secretary of State, removing the power of the Secretary of State give effect to approving or varying such schemes (there is a power retained for the Secretary of State to revoke in exceptional circumstances) and giving local transport authorities the power to develop, vary and revoke their own schemes by order.

| | |
|---|---|
| **Will the policy be reviewed?** It will be reviewed. **If applicable**, **set review date**: 4/2017<br>**What is the basis for this review?** Not applicable. If applicable, set sunset clause date: Month/Year | |
| **Are there arrangements in place that will allow a systematic collection of monitoring information for future policy review?** | Yes |

SELECT SIGNATORY Sign-off For consultation stage Impact Assessments:
**I have read the Impact Assessment and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the leading options.**

Signed by the responsible
SELECT SIGNATORY: ..... Date: .....

# Summary: Analysis and Evidence Policy Option 1

Description:
Amend primary and secondary legislation to remove the requirement that permit schemes are submitted by local highway authorities to the Secretary of State.

| Price Base Year | PV Base Year | Time Period Years | Net Benefit (Present Value (PV)) (£m) | | |
|---|---|---|---|---|---|
| | 2012 | 10 | Low: £0.552 | High: £0.675 | Best Estimate: £0.614 |

| COSTS (£m) | Total Transition (Constant Price) | Average Annual (excl. Transition) | Total Cost (Present Value) |
|---|---|---|---|
| Low | 0 | 0 | 0 |
| High | 0 | 0 | 0 |
| Best Estimate | 0 | 0 | 0 |

Description and scale of key monetised costs by 'main affected groups'
There are no direct additional costs as the policy removes an administration burden on both local authorities and central government, and we assume no additional charge to utility companies.

Other key non-monetised costs by 'main affected groups'
N/A

| BENEFITS (£m) | Total Transition (Constant Price) | Average Annual (excl. Transition) | Total Benefit (Present Value) |
|---|---|---|---|
| Low | 0 | £0.07 | £0.552 |
| High | 0 | £0.08 | £0.675 |
| Best Estimate | 0 | £0.07 | £0.614 |

Description and scale of key monetised benefits by 'main affected groups'
The benefits for this policy are from the administrative time saved by DfT for approving schemes. We have assumed around 4 applications per year but types of applications - such as joint or common schemes from metropolitan authorities could involve longer time spent.

Other key non-monetised benefits by 'main affected groups'
There are likely to be benefits to the wider public where permit schemes are introduced and the road network is more effectively managed. Time savings associated with ministerial decisions are not monetised.

| Key assumptions/sensitivities/risks | Discount rate (%) | 3.5 |
|---|---|---|

It is assumed it costs the Department £8,676 in wage costs to approve an application for a scheme. Office costs are assumed to be zero. It is expected that 4 applications will be received in 2012 and there will be an increase on one application per year over the appraisal period. Regulations remain in place to ensure fees charged by authorities remain as set and there is also a safeguard in place to allow the Secretary of State the ability to direct and authority to revoke unworkable schemes. Sensitivity analysis is provided to reflect that different types of application may require more or less work than estimated in the average case.

| Direct impact on business (Equivalent Annual) £m): | | | In scope of | Measure qualifies |
|---|---|---|---|---|
| Costs: n/a | Benefits: n/a | Net: n/a | Yes/No | IN/OUT |

## Enforcement, Implementation and Wider Impacts

| | | | | | |
|---|---|---|---|---|---|
| What is the geographic coverage of the policy/option? | | | England | | |
| From what date will the policy be implemented? | | | 01/04/2012 | | |
| Which organisation(s) will enforce the policy? | | | n/a | | |
| What is the annual change in enforcement cost (£m)? | | | n/a | | |
| Does enforcement comply with Hampton principles? | | | No | | |
| Does implementation go beyond minimum EU requirements? | | | No | | |
| What is the CO2 equivalent change in greenhouse gas emissions? (Million tonnes CO2 equivalent) | | | Traded: n/a | Non-traded: n/a | |
| Does the proposal have an impact on competition? | | | No | | |
| What proportion (%) of Total PV costs/benefits is directly attributable to primary legislation, if applicable? | | | Costs: 0 | Benefits: 0 | |
| Distribution of annual cost (%) by organisation size (excl. Transition) (Constant Price) | Micro | < 20 | Small | Medium | Large |
| Are any of these organisations exempt? | No | No | No | No | No |

## Specific Impact Tests: Checklist

Set out in the table below where information on any SITs undertaken as part of the analysis of the policy options can be found in the evidence base. For guidance on how to complete each test, double-click on the link for the guidance provided by the relevant department.

Please note this checklist is not intended to list each and every statutory consideration that departments should take into account when deciding which policy option to follow. It is the responsibility of departments to make sure that their duties are complied with.

| Does your policy option/proposal have an impact on…? | Impact | Page ref within IA |
|---|---|---|
| Statutory equality duties[1]<br>Statutory Equality Duties Impact Test guidance | No | n/a |

| Economic impacts | | |
|---|---|---|
| Competition Competition Assessment Impact Test guidance | No | n/a |
| Small firms Small Firms Impact Test guidance | No | n/a |

| Environmental impacts | | |
|---|---|---|
| Greenhouse gas assessment | No | n/a |
| Wider environmental issues | No | n/a |

| Social impacts | | |
|---|---|---|
| Health and well-being Health and Well-being Impact Test guidance | No | n/a |
| Human rights Human Rights Impact Test guidance | No | n/a |
| Justice system Justice Impact Test guidance | No | n/a |
| Rural proofing Rural Proofing Impact Test guidance | No | n/a |

| Sustainable development<br>Sustainable Development Impact Test guidance | No | n/a |
|---|---|---|

# 1. ———————

[1] Public bodies including Whitehall departments are required to consider the impact of their policies and measures on race, disability and gender. It is intended to extend this consideration requirement under the Equality Act 2010 to cover age, sexual orientation, religion or belief and gender reassignment from April 2011 (to Great Britain only). The Toolkit provides advice on statutory equality duties for public authorities with a remit in Northern Ireland.

## Evidence Base (for summary sheets) – Notes

Use this space to set out the relevant references, evidence, analysis and detailed narrative from which you have generated your policy options or proposal.  Please fill in References section.

## References

Include the links to relevant legislation and publications, such as public impact assessments of earlier stages (e.g. Consultation, Final, Enactment) and those of the matching IN or OUTs measures.

| No. | Legislation or publication |
|---|---|
| | Traffic Management Act (2004) |
| | The Traffic Management Permit Scheme (England) Regulations 2007 |
| | Statutory Guidance for Permits |
| | Code of Practice for Permits |

+ Add another row

## Evidence Base

Ensure that the information in this section provides clear evidence of the information provided in the summary pages of this form (recommended maximum of 30 pages). Complete **the Annual profile of monetised costs and benefits** (transition and recurring) below over the life of the preferred policy (use the spreadsheet attached if the period is longer than 10 years).

The spreadsheet also contains an emission changes table that you will need to fill in if your measure has an impact on greenhouse gas emissions.

## Annual profile of monetised costs and benefits* - (£m) constant prices

| | Y0 | Y1 | Y2 | Y3 | Y4 | Y5 | Y6 | Y7 | Y8 | Y9 |
|---|---|---|---|---|---|---|---|---|---|---|
| Transition costs | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Annual recurring cost | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Total annual costs | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Transition benefits | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Annual recurring benefits | £0.035 | £0.042 | £0.049 | £0.055 | £0.060 | £0.066 | £0.071 | £0.075 | £0.079 | £0.08 |
| Total annual benefits | £0.035 | £0.042 | £0.049 | £0.055 | £0.060 | £0.066 | £0.071 | £0.075 | £0.079 | £0.08 |

* For non-monetised benefits please see summary pages and main evidence base section

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## Evidence Base (for summary sheets)

The Traffic Management Act (TMA) 2004 require, where local transport authorities choose to introduce a permit scheme, it to be submitted for assessment and approval by the Secretary of State before it can have effect by order made by the Department (in Wales, the approval of Welsh Assembly Government Ministers is required and this exercise does not impact on Wales where the process will remain the same). The Traffic Management Permit Scheme (England) Regulations 2007 also provide for submission and approval of a permit scheme to the Secretary of State.

The preferred policy option is to remove the need for local authorities to formally apply to the Secretary of State before operating permit schemes within their area. This will remove the burden on those authorities to prepare a prescribed set of documents and information to the Secretary of State, and remove the burden of the Secretary of State's to give formal approval before a scheme can come into force.

The ability of authorities to introduce schemes remains, and therefore both the permit regulations and statutory guidance are retained. This will ensure schemes continue to be developed and implemented as before.

Additionally it is proposed that details of schemes and an evaluation of them will be published on local authority websites to ensure greater transparency. Currently only LoPS (the London scheme) and Kent have been operating long enough to allow for formal evaluation. The LoPS scheme evaluation can be found on the site below and the Kent scheme will be placed on the Kent County Council website by the end of July.

LoPS:

http://www.londoncouncils.gov.uk/search.htm?cx=012816060298198299354%3Aulbaum7l6aw&cof=FORID%3A11&ie=UTF-8&q=Search...LoPS+report#1085

The Secretary of State is considering retaining the power to revoke failing schemes.

## Problem under consideration

Currently a considerable amount of time is spent by the Department assessing permit applications received from local authorities. The Government is committed to localism and reducing bureaucracy. The removal of this layer in the development process for 'permit schemes' will not only save time it will also reduce the administrative burden on the Department. For these reason only one option has been developed – that of removing the approval process by the Secretary of State and transferring that role to local authorities.

## Policy Rationale

Part 3 of the Traffic Management Act empowers local highway authorities (and the Secretary of State and Welsh Ministers in their capacity as highway authority for certain roads) to prepare and implement permit schemes. Section 33 provides that a scheme prepared and submitted by a local highway authority can be implemented only after the Secretary of State (in England) or the Welsh Ministers (in Wales) has given effect to the proposed scheme by means of a statutory instrument. Schemes can also only be carried by the same process. This constraint was considered necessary as part of TMA because permit schemes were an untested concept and it

was felt necessary to hold some central control to prevent a large number of schemes coming into operation until the approach was proven.

Permit schemes have are now operational across London, Kent, Northamptonshire and most recently St Helens. Those schemes in operation long enough to evaluate their schemes (LoPS and Kent) appear to be delivering promising improvements (see above for scheme evaluation). A number of other authorities in England are developing proposals for their own schemes.

The Government is also pursuing an active policy of devolving powers and decision-making from Whitehall to local government. As a result, Ministers wish to remove the existing requirement for local highway authorities' permit scheme proposals for implementing or varying a scheme to be submitted to the Secretary of State. Instead, it would be for local highway authorities themselves to take the final decision on whether a scheme should go ahead (or be amended) in their area and to determine precisely what form any scheme should take. Once the authority had taken the decision to implement the scheme, or to vary it, it would give effect to that decision by order - there would no longer be a need for submission to the Secretary of State.

The Secretary of Sate will retain the existing power to make regulations about permit schemes. This will preserve a degree of consistency about how schemes operate and to provide some protections for the interests of utility companies. The Secretary of State proposes to retain the power to direct a local authority to revoke their scheme if the need arises, again providing protections for the utility companies.

## Assessment of costs and benefits

## Option 1 costs

There are no direct costs associated with developing this policy, as the proposal removes a burden on both the Department and Local Authorities.

## Option 1 benefits

The monetised benefits for this policy are around the administrative time saved by the Secretary of State for approving schemes.

Local Authorities will also save time by not submitting schemes to the Department. The Regulations do not allow for authorities to make a profit, above running costs, from the implementation of permit schemes – the proposed change will not alter this, as the Regulations remain unchanged. It is therefore unlikely that there will be direct cost savings to authorities so no amount has been included in the net present value. This does mean that cost savings to the Local Authorities will be passed on to applicants.

There are also likely to be non-monetised benefits to the wider public where permit schemes are introduced and the road network is more effectively managed, this has the potential to reduce congestion.

Currently the Department for Transport reviews each application, essentially carrying out 4 tests, these are:

Test 1: A test of the compliance of the proposed scheme with the requirements of relevant legislation and the Secretary of State's statutory guidance. We currently check that the scheme contains statements that enable us to conclude that all the requirements written in the legislation and statutory guidance have been met.

Test 2: A test to determine if the proposed permit fees are reasonable and adequately justified. The Secretary of State is required, under section 37 (9) of the Traffic Management Act 2004

(TMA), to ensure that Permit fees raised by proposed schemes do not exceed the prescribed costs of implementing the scheme.

Test 3: A test of whether the proposed scheme is likely to deliver value for money. This requires a basic appraisal of the costs and benefits of the scheme, demonstrating that the scheme, on the balance of probabilities, is likely to deliver net benefits to road users and wider society that exceed the additional costs of the scheme.

Test 4: Finally, DfT currently consider whether the scheme is deliverable in practice, and if it is therefore in the public interest to give effect to the scheme through legislation.

All of the above will no longer be carried by the Department and will result in time and money saved.

A break down of each task and approximate staff costs is listed below:

- Checking of permit application – 5 Days – HEO, Cost £445
- Checking of cost benefit analysis – 15 Days – G7, Cost £2113
- Checking of fees analysis – 15 Days – HEO, Cost £1335
- Checking compliance, i.e. objectives met, consulted etc – 15 Days – HEO, Cost £1335
- Legal analysis – 15 Days, G7, Cost £2113
- Specialist input and clearance – 5 Days, HEO, Cost £445
- Consideration of evidence and feedback from legal/economists – 5 Days – HEO, Cost £445
- Drafting submission – 5 Days, HEO, Cost £445
- Ministerial decision – 5 Days (unquantified)

This provides an estimate total cost per assessment of £8,676. Removing the requirement for this assessment process would therefore save approximately this amount, per case. This cost is a conservative estimate as cost savings associated with ministerial and private office staff time have not been quantified. It should be noted that there are variables within salary bands and different personal may be used over time (and straight salary not capitation rates have been used).

The number of additional applications is 9 applications made over the coming 2 years: this is based on conversations with local authorities. The certainty of all these 9 authorities or groups of authorities seeking to implement a scheme is high as they are already in scoping discussions with the Department and it is likely these applications would be come forward for approval over the next two years. With this information we have estimated there will be 4 applications in 2012, increasing by one each year for the following years.

Sensitivity analysis is undertaken to reflect the potential for different types of application to be submitted each year. Depending on their scale, they may incur higher/lower costs than the expected average (stated above). As such a range of cost figures is presented which allow for a +/-10% difference from average cost figures.

In future years there is the potential for every highways authority in England to bring forward a scheme and introduction might increase as authorities learn best practice from those already in operation. This may mean that our estimate is very conservative. It is hoped that the consultation process will provide greater certainly on this issue, so that the Impact Assessment can be refined.

Authorities will benefit from a slight reduction of administration costs, by not having to submit formal documentation to the Secretary of State. Where groups of authorities bring forward

schemes with central operations there may be economies of scale, but the main benefit for authorities will be greater control and certainty permit schemes are likely to provide, allowing them to manage their budgets with greater predictability, for example in the recruitment in staff needed to operate permit schemes.

This impact assessment supports the consultation process from which further evidence is sought, additional evidence will be used to enhance and refine the final impact assessment. At this stage the assumptions used are based on the best information available.

If the evidence used proves largely correct there is minimal risk to the costs and benefits shown, and the costs / assumptions are based on evidence of the review and assessment process since its introduction, and are therefore the assumptions made are considered to be robust.

There are considered to be minimal risks to the costs and benefits shown in this impact assessment.

Potential costs to utilities, which we cannot quantify, should the introduction of schemes be brought forward are assumed not to change in the absence of DfT checking and approval of permit schemes.

The ending of DfT's checking, analysis and approval is assumed not to lead to additional local authority processes and governance costs.

## Scheme implementation and evaluation

It would be for highway authorities to develop scheme proposals and implementation plans (in consultation with street works undertakers and other interested parties). The Government's expectation is that local authorities shall have a robust evaluation plan built into any proposed scheme. Local authorities are required to vary or revoke failing schemes where they fail to meet the benefits expected. The evaluation undertaken by authorities would need to set out the evidence that will be collected to undertake evaluation, setting out pre-permit scheme benchmarks against which the comparison would be made.

## Annexes

Annex 1 should be used to set out the Post Implementation Review Plan as detailed below. Further annexes may be added where the Specific Impact Tests yield information relevant to an overall understanding of policy options.

# Annex 1: Post Implementation Review (PIR) Plan

A PIR should be undertaken, usually three to five years after implementation of the policy, but exceptionally a longer period may be more appropriate. If the policy is subject to a sunset clause, the review should be carried out sufficiently early that any renewal or amendment to legislation can be enacted before the expiry date. A PIR should examine the extent to which the implemented regulations have achieved their objectives, assess their costs and benefits and identify whether they are having any unintended consequences. Please set out the PIR Plan as detailed below. If there is no plan to do a PIR please provide reasons below.

| |
|---|
| Basis of the review: [The basis of the review could be statutory (forming part of the legislation), i.e. a sunset clause or a duty to review , or there could be a political commitment to review (PIR)];<br>The Government's expectation is that a robust evaluation plan will be built into schemes, as the evaluation plan would be an integral part of the scheme authorities would need to adhere to that plan in order to comply with permit regulations. |
| Review objective: [Is it intended as a proportionate check that regulation is operating as expected to tackle the problem of concern?; or as a wider exploration of the policy approach taken?; or as a link from policy objective to outcome?]<br>The objective of any scheme evaluation would be to assess the extent to which the schemes objectives (as stated in the scheme) are being met. |
| Review approach and rationale: [e.g. describe here the review approach (in-depth evaluation, scope review of monitoring data, scan of stakeholder views, etc.) and the rationale that made choosing such an approach]<br>It is for the highway authority to propose suitable methodologies for evaluating their scheme. Individual scheme evaluation would inform the Government's view as to the overall effectiveness of the legislative change. |
| Baseline: [The current (baseline) position against which the change introduced by the legislation can be measured]<br>Baseline positions should be set as part of the individual authorities' evaluation plans. |
| Success criteria: [Criteria showing achievement of the policy objectives as set out in the final impact assessment; criteria for modifying or replacing the policy if it does not achieve its objectives]<br>Success criteria should be set out as part of individual authorities' evaluation plans. |
| Monitoring information arrangements: [Provide further details of the planned/existing arrangements in place that will allow a systematic collection systematic collection of monitoring information for future policy review]<br>Monitoring information arrangements should be set out as part of individual authorities' evaluation plans. |
| Reasons for not planning a review: [If there is no plan to do a PIR please provide reasons here]<br>Not applicable. |

# Addendum E

## Information to support this consultation on Fees and Key Performance Indicators

## Section 1: Fees

## Abridged extract from Traffic Management Act 2004 Code of Practice for Permits – Procedures and Guidance Chapter 15.

Maximum fees for permit charges are set out in Regulation 30(4), (5) and (6). They cannot be exceeded. (The proposal in this consultation will not alter Regulation 30(4), (5) and (6) or Traffic Management Act 2004 Code of Practice for Permits – Procedures and Guidance Chapter 15 as it relates to fees).

Recommended fees, within the maximum fee caps, permit schemes should not provide for fees higher than those set out in the table below in respect of each class of permit.

| | Proposed maximum fee levels per permit or provisional advance authorisation | |
|---|---|---|
| | Road category 0 - 2 or Traffic Sensitive Streets* | Road category 3 & 4 non Traffic Sensitive Streets* |
| Application fee for Major Activity Permit (includes Provisional Advance Authorisation) | £105 | £75 |
| Issue of Major Activity Permit | £240 | £150 |
| Issue of Standard Activity Permit | £130 | £75 |
| Issue of Minor Activity Permit | £65 | £45 |
| Issue of Immediate Activity Permit | £60 | £40 |

* Streets are defined as traffic sensitive for this purpose if they are designated as traffic sensitive for any time of the day or year

# Section 2: Key Performance Indicators (KPIs)

Abridged extract from the current Traffic Management Act 2004 Code of Practice for Permits – Procedures and Guidance Chapter 20. Nothing in the proposed changes alters the requirement for Authorities to perform their statutory network management duties.

Authorities must demonstrate parity of treatment for all activity promoters, particularly between statutory undertakers and the highway authorities' own promoters and this will remain. This equality is measured by a permit authority producing an annual set of KPIs that identify the treatment of individual promoters.

It was always the view that the KPIs would be developed as experience of permit schemes increased. It is proposed that the statutory requirement for these particular KPIs be removed.

The removal of the statutory requirement to use the KPIs set out below (although they can of course still be used if chosen), will allow Authorities the ability to choose how best to evaluate permit schemes, but this proposal does not remove the requirement to undertake evaluation of schemes and publish to publish this - we plan to require this is undertaken annually.

Questions set out in Addendum C (the consultation response proforma provided on the web as a 'word' document) seeks information on the proposal to remove the statutory nature of the KPIs and asks how evaluation may best be delivered (such as annually; using an extension of the KPI scorecard being developed by HAUC or any other view - we seek evidence to support responses provided).

| **1. The number of permit and permit variation applications received, the number granted and the number refused** |
|---|
| This will be measured by the promoter and shown as: the total number of permit and permit variation applications received, excluding any applications that are subsequently withdrawn.<br>- the number granted as a percentage of the total applications made<br>- the number refused as a percentage of the total applications made.<br>This will be a core indicator of the operation of the permit system.<br>**It is a requirement that all authorities operating a permit scheme produce this performance indicator.** |
| **2. The number of conditions applied by condition type** |
| This will be measured by promoter and shown as:<br>• the number of permits issued<br>• the number of conditions applied, broken down into condition types. The number of each type being shown as a percentage of the total permits issued.<br><br>This KPI is dependent upon the use of standard conditions. Local or specific conditions should be grouped into a single category that may be analysed more fully if required.<br><br>The number and types of condition applied are likely to be determined by the specific location, scale and category of the works. There will be a need to separate the data to get down to reasonably equivalent situations. For example, if for minor works on category 2 |

streets, one promoter had an average of four conditions and another had an average of seven conditions then that would suggest an imbalance. Similarly, if one promoter had conditions for restricted hours of working on traffic-sensitive streets in 90% of cases and another had such conditions in only 60% of cases, then that would raise a question. **It is a requirement that all authorities operating a permit scheme produce this performance indicator**.

**3. The number of approved extensions**

This will be measured by promoter and shown as:

- the total number of permits issued
- the number of requests for extensions shown as a percentage of permits issued
- the number of agreed extensions as a percentage of extensions applied for.

**4. The number of occurrences of reducing the application period**

This will be measured by promoter and shown as:

- the total number of permit and permit variation applications made
- the number of requests to reduce the notification period as a percentage of total applications made
- the number of agreements to reduce the notification period as a percentage of requests made.

**5. The number of agreements to work in section 58 and section 58A restrictions**

This will be measured by promoter and shown as:

- the number of applications made to carry out works where a section 58 or 58A restriction is in place, other than the allowed exceptions
- the number of agreements given for these works to take place as a percentage of the total number of requests.

NB: This KPI is not supported by EToN

**6. The proportion of times that a permit authority intervenes on applications that would normally be expected to be deemed**

This should be broken down by promoter and indicated as the number of interventions made as a percentage of the number of 'deemed applications' processed, including 'deemed planned applications' made.

This KPI would be limited to schemes that do not require a proactive check of every permit application received.

Any variation in the dates requested in the initial 'deemed application' and those granted in the permit will indicate where an intervention had taken place. Intervention may not always be made in respect of timing, although it is most likely to be: this KPI will act as a first order measure. It will indicate where active intervention has taken place and not where scrutiny has occurred without any active intervention.

**7. Number of inspections carried out to monitor conditions**

This will be broken down by promoter and shown as:

- the number of sample permit condition checks carried out as a percentage of the number of permits issued
- the percentage of sample inspections by promoter should also be shown.