



Department
for Transport

Traffic Management Act 2004 Part 3: Local Highway Authority Permit Schemes:

Consultation on the amendments to the 2007 permit scheme regulations

August 2014

The Department for Transport has actively considered the needs of blind and partially sighted people in accessing this document. The text will be made available in full on the Department's website. The text may be freely downloaded and translated by individuals or organisations for conversion into other accessible formats. If you have other needs in this regard please contact the Department.

Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR
Telephone 0300 330 3000
Website www.gov.uk/dft
General email enquiries <https://www.dft.gov.uk/about/contact/form/>

© Crown copyright 2014

Copyright in the typographical arrangement rests with the Crown.

You may re-use this information (not including logos or third-party material) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit www.nationalarchives.gov.uk/doc/open-government-licence/ or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

Contents

1. Summary and information on the consultation process	4
2. Introduction to the proposed amendments	8
3. Consultation issues and questions	9
Annex A = Draft set of regulations setting out the changes in red for ease of reference.....	14
Annex B = Draft Statutory Instrument amending the 2007 Permit Schemes Regulations).....	19
Annex C = Consultation Questions.....	23

Summary

1.1

This consultation concerns proposed amendments to the Traffic Management Permit Scheme (England) Regulations 2007 (“the 2007 Regulations”). We intend these amendments to take effect from 2015. The Traffic Management Act 2004 (TMA) Part 3 introduced ‘permit schemes’, to allow local highway authorities (authorities) in England and Wales to introduce a scheme requiring those wishing to undertake works on the authority’s roads to apply for a permit. The TMA provides the power for the Secretary of State to make regulations covering requirements for permit schemes.

1.2

Currently, the TMA requires that, before a permit scheme can come into operation, the authority must submit the scheme to the Secretary of State for approval and for the scheme to be given effect to by Order. Such schemes are developed and must be commenced in accordance with the 2007 Regulations.

1.3

Following a consultation in 2012, the Government decided (for England only) to remove the requirement for the Secretary of State to give effect to permit schemes by Order from 2015. This decision was set out in a written ministerial statement on 13th January 2013. The effect of this is that from spring 2015 authorities will be required to give effect to permit schemes and vary or revoke their schemes by their own Orders. Authorities will still need to carry out a robust development of their proposed scheme, including a cost benefit analysis and a stakeholder consultation.

Changes to the Traffic Management Act

1.4

Subject to the will of Parliament, the necessary changes to the TMA will be implemented through the Deregulation Bill. Once the Bill has received royal assent and the relevant provisions have been brought into force, there will no longer be a need to obtain approval for permit schemes from the Secretary of State and the associated requirements relating to that provision will also fall away (e.g. the need for the authority to submit an application to the Secretary of State and for the Secretary of State to give effect to the scheme by order).

The Traffic Management Permit Scheme (England) (Amendment) Regulations 2015

1.5

To accommodate the changes to the TMA it is planned that the 2007 Regulations will be amended. These amendments will be procured by a further statutory instrument (“the Amendment Regulations”), which will come into force at the same time as the

changes to the TMA (i.e. April 2015). Some of the amendments to the 2007 Regulations are required as a consequence of changes to the TMA (known as “consequential amendments”). For example, the changes needed to remove from the 2007 Regulations the requirements around submitting a permit scheme to the Secretary of State and the need for the Secretary of State to give effect to the scheme by order. These amendments are necessary to ensure the 2007 Regulations reflect the TMA and consequently we are not seeking comments on them as part of this consultation. However, the Department has decided, in addition to the consequential amendments, the 2007 Regulations can be improved by some additional amendments and it is these that we are seeking comments on and which are set out below.

We consider the changes proposed will assist in ensuring future permit schemes provide a balance between the duties and responsibilities of both local highway authorities and utility companies, and reflect best practice learnt from schemes already operating.

Who may wish to respond to this consultation?

1.6

Responses are welcomed from anyone, but representatives from local authorities and utility companies, and their representative bodies as well as those representing the full range of road users, are most likely to wish to respond. If you have any suggestions of others who may wish to be involved please either forward this document to them or please contact Ann Morley as below.

Duration of the consultation

1.7

The consultation period begins on **12 August 2014** and will run until **25 September 2014**. Please ensure that your response reaches us by the closing date. If you would like further copies of this consultation document, it can be found at:

<https://www.gov.uk/government/news/permit-scheme-consultation>

The press notice is at

<https://www.gov.uk/government/consultations/street-works-permit-schemes-amendments-to-regulations>

or you can contact Claudette Bagalo (as below) if you **need** alternative formats (Braille, audio CD, etc) of this document:

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

If you need a paper copy of this document please contact of Ann Morley at:
Permit Scheme Approval Process Consultation
Third Floor
Department for Transport

Great Minster House
33 Horseferry Road, London SW1P 4DR

How to respond

1.8

You are invited to respond to the questions described in section 3 and set out as a questionnaire in Annex C. Annex C is also provided separately on the website at <https://www.gov.uk/government/consultations/traffic-permitschemes-regulations-2015> . 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
Third Floor
Department for Transport
Great Minster House
33 Horseferry Road, London SW1P 4DR

What will happen next?

1.9

A summary of responses, including the next steps, will be published within three months of the consultation closing. Publication will be on the web site at <https://www.gov.uk/government/consultations/traffic-permitschemes-regulations-2015> .Paper copies will be available on request.

Consultation principles

1.10

- departments will follow a range of timescales rather than defaulting to a 12-week period, particularly where extensive engagement has occurred before;
- departments will need to give more thought to how they engage with and consult with those who are affected;
- consultation should be ‘digital by default’, but other forms should be used where these are needed to reach the groups affected by a policy; and
- the principles of the Compact between government and the voluntary and community sector will continue to be respected.

Freedom of Information

1.11

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.

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.

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.

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 proposed amendments

2.1

This consultation seeks views on the changes we are proposing, other than consequential amendments, to the 2007 Permit Scheme Regulations. The changes are aimed at maintaining a balance between the duties and responsibilities of local highway authorities and utility companies, and also increasing consistency in the way local highway authorities operate to make it easier for utility companies who are likely to be operating across a number of permitting authority areas.

2.2

We have not made any changes to the following:

- The introduction of permit schemes remains optional.
- The Secretary of State remains a statutory consultee and will still be able to direct an authority to revoke or vary a scheme, if he deems it appropriate.
- The fees that authorities can apply to permits remain unchanged - with the regulations continuing to constrain authorities to ensure that permit fee income cannot be more than is necessary to cover the schemes' administration costs.
- The form of fixed penalty notices (and the amounts of the penalty) contained in the Schedules are unchanged - they are not shown in this document.

Information to be contained in the statutory guidance

2.3

Once we have established the way forward on the Amendment Regulations, we will revise statutory guidance to reflect the changes. The revised statutory guidance will provide information on the development of schemes including information on an amended set of Key Performance Indicators (KPIs), for use in the evaluation of permit schemes. Those changes will allow for simplified, but more robust understanding of the effects of the scheme. We plan to consult on this by the end of the year. The statutory guidance may be supported by sector developed guidance.

Transitional Arrangements

2.4

Subject to the will of Parliament, the changes to the TMA in the 2014 Deregulation Bill (clause 36 and schedule 9) will mean that, from spring 2015, all schemes including those which were brought into effect by a statutory instrument signed by the Secretary of State, will operate as though they came into effect by local authorities' own powers.

3. Consultation issues and questions on the proposed amendments

3.1

At Annex A we have provided a document which shows those provisions of the 2007 Regulations which it is proposed to amend. The additions are set out in red. These include all proposed amendments. Omissions from the current text are shown in strikethrough. The Amendment Regulations will look different to this and will insert those amendments into the 2007 Regulations. This approach makes it easier for the reader to see the proposed amendments in situ and to comment more effectively on them.

Subject to the outcome of the consultation, the Amendment Regulations will propose the same amendments as set out here. However, it may be that there are other consequential amendments we need to make, but these are not subject to this consultation. For completeness, at Annex B we have provided a draft Statutory Instrument (S.I) which reflects the proposed changes. The questions which you are invited to answer are set out below. We have introduced each question with information on why we are proposing the change. The questions are summarised in Annex C, which is provided as a separate document, on the website, for responses. The proposed changes discussed here are only those in addition to the already decided removal of the Secretary of State from the approval process.

Proposed Non-Consequential Amendments to the 2007 Permit Scheme Regulations

Consultation for permit schemes – regulation 3 (1) (g) and 3 (3)

3.2

Regulation 3 will be amended to require that before an authority gives effect to its own permit scheme it must consult the persons set out in Regulations 3 (1) (a) to (f). There is a proposed new sub-paragraph at (g) which will require any other additional persons mentioned in the Permit Scheme Guidance to be consulted at the same time. Regulation 3 will be further amended at 3 (3) to ensure that the consultation must be sufficiently detailed so that respondents can provide meaningful input into the consultation.

3.3

The transitional arrangements will enable schemes that are already in development and which have already undertaken a consultation exercise, in line with the regulations, prior to April 2015 will not need to re-consult. This will ensure there need be no duplication of effort or unnecessary expenditure by the sector.

Q.1. Are you content with the proposed change to the consultation requirements as described above?

Scheme Evaluation - regulations 4 (1) (e) and 16 (a)

3.4

We have made some amendments to the procedural requirements for commencing new or making variations to permit schemes related to the costs and benefits. This will ensure when the scheme is evaluated its benefits and achievements are reflected in relation to its costs.

The regulations have been strengthened in 4 (1) (i) so that Authorities will need to consider responses and not just a summary of those responses when developing or varying a scheme. We have also strengthened this regulation by adding 4 (2) so that a scheme developer (the local highway authority) must be satisfied that their scheme complies with these regulations.

3.5

We intend that authorities will continue to evaluate their schemes' effectiveness after the first 12 months of operation, and to publish that evaluation. This will demonstrate that the scheme is delivering its objectives. We have set out, in a new regulation 16 A, our proposal that additionally after publishing the initial 12 month evaluation subsequent 3 year evaluations will be published thereafter. Publicising evaluations every 3 years will demonstrate trends in a scheme achievements and will enable the results to be examined across a robust evidence-base. To support this evaluation we have developed, with HAUC (England), a set of Key Performance Indicators (KPIs). The KPIs are derived from readily accessible information which can be easily collected and published. Details of evaluation, and the set of KPIs, will be provided within the statutory guidance.

Q.2 Do you have any comments on the changes to the evaluation requirements?

Q.3 Are the proposals for evaluation clear?

Scheme Variations – regulation 5

3.6

We propose in regulation 5 that where an existing scheme is varied (other than typographical, formatting and grammar amendments (regulation 5 (3)) then the entirety of the scheme (varied and existing part) would need to reflect the changes to the regulations and statutory guidance. So that existing schemes, when varied, would move to using all the amended regulations incorporating, as an example, the need to use the condition wording in the statutory guidance. The aim is that this will ultimately result in all schemes using the same regulations to aid consistency of scheme development across the country.

Q.4. Do you have any comments on this proposed change?

Specifying Grounds for refusing a permit – regulation 9 (10)

3.7

In regulation 9 we have added in regulation 9 (1) the words ‘by electronic communication’ to better match the regulations with the means of enabling the receipt and issuing of permits. We have also added to this regulation a new paragraph (10) that will require a permit scheme to set out the grounds which will be used for refusing a permit. The ‘guidance’ will set out that where the permit authority plans to refuse a permit application, it should show the grounds that have been used for that refusal. This will enable utilities to continually improve the quality of permits applied for, saving time and money across the sector.

Q.5 Do you have any comments on this additional requirement?

Scheme Conditions – regulation 10

3.8

Over recent months the Department has become aware of increasingly wide interpretation and variations on the requirement for works promoters to apply conditions, which has created anomalies in scheme design and operation. Inconsistencies in scheme conditions can lead to increased complication and expense for works’ promoters, and create a greater risk of confusion amongst operatives on the street, which we want to minimise.

It has been decided to reduce the scope for such inconsistency by requiring future schemes (letter from the Department signed by Anthony Boucher dated 17 March refers) and all schemes when they are varied to use common wording for conditions.

3.9

The changes in the requirements for applying conditions are set out in regulation 10 where a new sub paragraph at 10 (6) has been added so that where a Permit Authority wishes to impose a condition to a permit, while still limited to the types described in regulation 10 (2 a – h), they must use the wording for the relevant type of condition as set out in an Annex to the Statutory Guidance. The Department may, from time to time, issue a revised annex to the statutory guidance with updated wording for the conditions. The conditions which will be inserted into the Guidance will be developed by the sector organisation HAUC, following consultation with stakeholders and the Secretary of State.

Q.6 Do you have any views on the addition of regulation 10 (6)

Time limits on Permit Authority – refunds of permit fees – regulation 16 (4)

3.10

In regulation 16 we have added a paragraph (4) that will require a permit authority to refund the full permit fee where that permit authority has cancelled a permit already issued where the cancellation has not been caused by the holder of the permit.

Q.7 Do you have any comments on this additional requirement?

Withdrawal of a fixed penalty notice – regulation 27 (5)

3.11

In regulation 27 we have added a section (5) that will require a permit authority to remove, from any electronic system or any other record system a fixed penalty notice that has been withdrawn – and to do this in a reasonable period of time. The correct keeping of records will enable an authority to better understand the performance of each utility and also for each utility to have a clearer picture of the quality of its works. We have not specified ‘reasonable period’ but will clarify this in statutory guidance.

Q.8 Do you have any comments on this additional requirement?

Traffic-Sensitivity – Power to charge a fee and discounts (regulation 30)

3.12

We propose to make two amendments to this regulation.

3.13

Firstly, in regulation 30 (7), we have clarified that where a ‘lane rental’ charging regime is operated and a charge is payable for works under that regime, a permit authority may not, in addition, require a permit fee for any permit issued for those works. However, a permit would still need to be applied for and granted in accordance with the operating requirements of that permit scheme.

3.14

Secondly, there is currently a requirement for discounts to works promoters in specific circumstances. We propose to extend this (regulation 30 (8)) by requiring that schemes offer an additional specific discount from the full permit fees for works taking place wholly outside of traffic-sensitive times. We consider that this fits with the purpose of traffic-sensitivity and is an effective tool for both stimulating behavioural change, reducing disruption and improving performance. We are not imposing a specific discount level, but we would suggest that it would be aligned to the fee for similar works on non-traffic sensitive streets.

Q.9 Do you have any comments on the provision of this discount?

General Matters

3.15

Although consequential, we welcome comments on whether the amended obligations in Regulations 3 and 4 (consultation and procedural requirements for permit schemes) are clear and will support development of schemes.

Q10. Is the obligation to comply with Regulations 3 and 4 “before giving effect to a permit scheme” clear and understandable?

3.16

We would ask that where you wish to raise other matters for consideration that you do so using questions 11 or 12. As the responses to this consultation are likely to be discussed with representatives of the sector, as well as within the Department, the points you raise may be shared. If you are not content for this to happen please let us know.

Q11. Do you have any comments on the actual drafting of the proposed amendments? In particular:

- **Are the amendments (whether consequential or not) clear and understandable?**
- **Are there any aspects which are not?**

Q12. Are there other matters you wish to raise? Is so, please specify the regulation concerned.

ANNEX A Draft S.I

STATUTORY INSTRUMENTS

2014 No. 0000

HIGHWAYS, ENGLAND

The Traffic Management Permit Scheme (England) (Amendment) Regulations 2015

<i>Made</i> - - - -	2015
<i>Laid before Parliament</i>	2015
<i>Coming into force</i>	- -
<i>6th April 2015</i>	

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 37 of the Traffic Management Act (1).

Citation, commencement and application

1.—a) These Regulations may be cited as the Traffic Management Permit Scheme (England) (Amendment) Regulations 2015 and shall come into force on 6th April 2015.

(1) These Regulations apply as respects England only.

Amendment to the Traffic Management Permit Scheme (England) Regulations 2007

2. The Traffic Management Permit Scheme (England) Regulations 2007 are amended as follows.

Amendment to regulation 2 (interpretation)

3. In regulation 3.

(a) after the definition of “emergency services” insert “the Guidance” means the “Guidance on developing, varying and revoking a local authority permit scheme” dated [] and from time to time revised and reissued by the Secretary of State;”;

(1) 2004 c.18. Part 3 of the Traffic Management Act has been amended by the Deregulation Bill 2014.

Amendment to the Part 2 heading

4. For “Application for scheme” substitute “Preparation of permit scheme”.

Amendment to regulation 3 (consultation for new permit schemes)

5. Regulation 3 is amended as follows—
in regulation 3(1)—
for “Prior to submitting a permit scheme to the Secretary of State under section 33 of the 2004 Act,” substitute
 - (a) “Where a Permit Authority has prepared a permit scheme under section 33 of the 2004 Act and before giving effect to that scheme,”
 - (b) in sub-paragraph (f), after “;” insert “and”;
 - (c) after sub-paragraph (f) insert—
“(g) any other persons specified in the Guidance as being persons to be consulted prior to giving effect to a permit scheme;”
 - (d) after paragraph (2) insert—
“(3) The consultation undertaken in accordance with paragraph (1) must be of sufficient detail to enable the persons set out in (a) to (g) to provide adequate responses.”

Amendment to regulation 4 (Procedural requirements for submitting new permit schemes)

6. Regulation 4 is amended as follows—
 - (a) In the heading, for “submitting” substitute “commencing”;
 - (b) Regulation 4 is amended as follows
 - (i) for “4” substitute “4-(1)”,
for “When submitting a permit scheme under section 33(1) or (2) of the 2004 Act, the Permit Authority shall provide the Secretary of State with the following information—” substitute
 - (ii) “Subject to paragraph (3), prior to giving effect to a permit scheme in accordance with section 33A of the 2004 Act, the Permit Authority must have considered the following—”
 - (iii) omit sub-paragraphs (a) and (d),
 - (iv) in sub-paragraph (e), after “permit scheme”, insert “and how those will be demonstrated at the evaluation of the scheme;”
 - (v) in sub-paragraph (i) omit “a summary of”,
 - (c) after paragraph (1) insert—
“(2) In addition to paragraph (1), the Permit Authority must confirm within the permit scheme that, in accordance with section 33(5), in preparing the permit scheme, it has complied with these Regulations and had regard to the Guidance.”

Amendment to regulation 5 (varying and revoking schemes at the permit authorities request)

7. Regulation 5 is amended as follows—

- (a) in the title, omit “at the Permit Authority’s request”
 - (b) regulation 5 is amended as follows—
 - (i) for “5” substitute “5-(1)”,
 - (ii) for “asking the Secretary of State to vary or revoke” substitute “varying or revoking”;
 - (iii) after “3(1)” insert “and comply with paragraph (3) of that regulation”;
 - (iv) after [new] paragraph (1) insert—

“(2) Prior to a variation of a permit scheme, a Permit Authority must have regard to the current version of the Guidance and these Regulations, with respect to—
 - (c) the proposed variation to the permit scheme; and
 - (d) the remainder of the scheme.
- (3) Amendments to a permit scheme to rectify typographical, formatting or grammatical errors do not constitute a variation in accordance with paragraph (1).”.

Amendment to regulation 9 (permits)

8. Regulation 9 is amended as follows.

- (a) in paragraph (1), after “obtained” insert “by electronic communication”;
- (b) after paragraph (9) insert—

“(10) A permit scheme must set out the grounds on which a permit can be refused.”

Amendment to regulation 10 (conditions attached to permits)

9. Regulation 10 is amended as follows.

- in paragraph (1),
- for “A permit scheme” substitute “Subject to paragraph (6), a permit scheme”,
- (a) in paragraph (2),
 - (i) for “Without prejudice to the generality of paragraph (1)” substitute “For the purposes of paragraph (1) and subject to paragraph (3),”
 - (ii) for “under that paragraph include” substitute “are those”
 - (b) after paragraph (5) insert—

“(6) A Permit Authority wishing to impose a condition in a permit for the relevant type of condition must use wording substantially in the form set out in the Guidance, as revised and reissued from time to time.”

Amendment to regulation 16 (time limits on Permit Authority)

10. Regulation 16 is amended as follows.

(a) after paragraph (3) insert—

“(4) If a person in possession of a permit cancels that permit prior to commencement of the specified works, the Permit Authority must refund in full the permit fee, where that person is not the cause of the cancellation.”

New regulation 16A (evaluation of permit scheme)

11. After regulation 16, insert the following new regulation—

“Evaluation of permit schemes

16A.—(1) A Permit Scheme must contain information on how the Permit Authority will evaluate that scheme.

(2) A permit scheme must be evaluated after twelve months of operation (“first evaluation”) and thereafter every third year for the duration of the scheme and such evaluation must include consideration of—

- (a) whether the fee structure needs to be changed in light of any surplus or deficit, subject to the requirement in regulation [];
- (b) the costs and benefits of operating the scheme; and
- (c) whether the permit scheme is meeting the key performance indicators set out in the Guidance.

(3) The details of the first evaluation must be made available to the persons in regulation 4(1) within three months.”

Amendment to regulation 17 (notification of permit scheme)

12. Regulation 17 is amended as follows.

- (a) in the heading, after “notification”, for “of permit scheme” substitute “prior to commencing the operation of a permit scheme”;
- (b) in paragraph (1)—
 - (i) for “Where the Secretary of State” substitute “Where a Permit Authority”,
 - (ii) for “34(4)” substitute “33A(2)”,
 - (iii) after “schemes” in the brackets, insert “:England”,
 - (iv) at the end, insert “Such notification must include the order giving effect to the permit scheme, as well as the scheme itself.”
- (c) in paragraph (2)—
 - (i) for “an order” substitute “a direction”,
 - (ii) after “36”, insert “(2)”.

Amendment to regulation 27 (withdrawal of fixed penalty notice)

13. Regulation 27 is amended as follows.

(a) after paragraph (4) insert—

“(5) Once a fixed penalty notice has been withdrawn the Permit Authority must remove it from any electronic system and any other record systems within a reasonable period of time.”.

Amendment to regulation 30 (power to charge a fee and discounts)

14. Regulation 30 is amended as follows.

- (a) in paragraph (1), after “32” omit the comma and substitute “and paragraph (3)”;
- (b) in paragraph (3), after “discounted, and” insert “subject to paragraph (8),”,
- (c) after paragraph (6) insert—

“(7) Where a Permit Authority is an Approved Authority for the purposes of the Street Works (Charges for Occupation of the Highway) England Regulations 2012, a fee may not be charged for the provision of a permit for works on a street for which a charge falls due under those Regulations.

(8) A permit scheme must include discounts for works which take place on streets subject to designation as traffic-sensitive, but where the works take place wholly outside traffic-sensitive times.”

Amendment to regulation 37 (modification of enactments)

15. Regulation 37 is amended as follows.

- (a) after paragraph (2), insert—

“(2A) Section 64(1) has effect as if—

- (a) after “or paragraph 2 of Schedule 3A” there were inserted “or the content, operation, variation or revocation of permit schemes”; and
- (b) after “street works” there was inserted “or works for road purposes”.

Signed by authority of the Secretary of State for Transport

Date

Name
Parliamentary Under Secretary of State
Department for Transport

EXPLANATORY NOTE

(This note is not part of the Order)

To be inserted here.

ANNEX B

DRAFT AMENDMENTS TO THE REGULATIONS FROM REGULATION 2

Interpretation

2--(1) In these Regulations—
“emergency services” include—

- (b) police, fire, rescue and ambulance services; and
- (c) Her Majesty’s Coastguard;

“the Guidance” means the “Guidance on developing, varying and revoking a local authority permit scheme” dated [] and from time to time revised and reissued by the Secretary of State;

Consultation for new permit schemes

~~3—(1) Prior to submitting a permit scheme to the Secretary of State under section 33 of the 2004 Act,~~ Where a Permit Authority has prepared a permit scheme under section 33 of the 2004 Act and before giving effect to that scheme, the Permit Authority shall consult—

(f) the Secretary of State; and

(g) any persons specified in the Guidance as being persons to be consulted prior to giving effect to a permit scheme;

(3)The consultation undertaken in paragraph (1) must be of sufficient detail to enable the persons set out in (a) to (g) to provide adequate responses.

Procedural requirements for ~~submitting~~ **commencing** new permit schemes

~~4 4 –(1) When submitting a permit scheme under section 33(1) or (2) of the 2004 Act, the Permit Authority shall provide the Secretary of State with the following information—~~Subject to paragraph (3), prior to giving effect to a permit scheme in accordance with section 33A of the 2004 Act, the Permit Authority must have considered the following—

~~(d) the name of every person who is a highway authority for one or more of the specified streets;~~

~~(d) how and when the Permit Authority proposes to evaluate that permit scheme so as to measure whether the objectives have been met;~~

(e) the costs and benefits (whether or not financial) which the Permit Authority anticipates will result from that permit scheme and how those will be demonstrated at the evaluation of that scheme;

(e) a summary of the responses received to the consultation undertaken under regulation 4 and of the changes made to the permit scheme following that consultation.

(2) In addition to paragraph (1), the Permit Authority must confirm within the permit scheme that, in accordance with section 33(5) of the 2004 Act, in preparing the permit scheme, it has complied with these Regulations and had regard to the Guidance.”

Varying and revoking schemes at the permit authorities request.

~~5~~ **5-(1)** Before asking the Secretary of State to vary or revoke a permit scheme the Permit Authority shall consult the persons referred to in regulation 3(1) and comply with paragraph (3) of that regulation.

“(2) Prior to a variation of a permit scheme, a Permit Authority must have regard to the current version of the Guidance and these Regulations, with respect to—
(a) the proposed variation to the permit scheme; and
(b) the remainder of the scheme.”

(3) Amendments to a scheme to rectify typographical errors, formatting or grammar do not constitute a variation in accordance with paragraph (1).”

Permits

9-(1) Subject to paragraph (2), a permit scheme must include provision requiring a permit to be obtained by electronic communication from the Permit Authority before specified works are carried out in a specified street.

(10) A permit scheme must set out the grounds upon which a permit can be refused.

Conditions attached to permits

10-(1) ~~Subject to paragraph (6), A permit scheme~~ a permit scheme shall include provision for the Permit Authority to attach conditions to permits and shall specify the types of condition which the Permit Authority may attach.

(2) ~~Without prejudice to the generality of paragraph (1),~~ For the purposes of paragraph (1) and subject to paragraph (3), the types of conditions which the Permit Authority may attach to permits under that paragraph include are those relating to—

(6) A Permit Authority wishing to impose a condition in a permit for the relevant type of condition must use the wording substantially in the form set out in the Guidance, as revised and reissued from time to time.

Time limits on Permit Authority

16 (4) If a person in possession of a permit cancels that permit prior to commencement of the specified works, the Permit Authority must refund in full the permit fee, where that person is not the cause of the cancellation.

Evaluation of permit scheme

16A.—(1) A Permit Scheme must contain information on how the Permit Authority will evaluate that scheme.

(2) A permit scheme must be evaluated after twelve months of operation (“first evaluation”) and thereafter every third year for the duration of the scheme and such evaluation must include consideration of—

- (a) whether the fee structure needs to be changed in light of any surplus or deficit, subject to the requirement in regulation [];
- (b) the costs and benefits of operating the scheme; and
- (c) whether the permit scheme is meeting the key performance indicators set out in the Guidance.

(3) The details of the first evaluation must be made available to the persons in regulation 4(1) within three months.”

Notification of ~~permit scheme~~ prior to commencing the operation of a permit scheme

~~17-(1) Where the Secretary of State~~ **Where a Permit Authority** has made an order under section ~~34(4)~~ **33A(2)** of the 2004 Act (implementation of local highway authority permit schemes: **England**) giving effect to a permit scheme, the Permit Authority shall notify the persons referred to in regulation 3(1) not less than four weeks before the date on which the scheme is to come into effect. **Such notification must include the order giving effect to the scheme as well as the scheme itself.**

(2) Where the Secretary of State has made ~~an order~~ **a direction** under section 36(2) of the 2004 Act (variation and revocation of permit schemes) to vary or revoke a permit scheme, the Permit Authority shall notify the persons referred to in regulation 4(1) that such direction has been made, not less than four weeks before the date on which the variation or revocation commences.

Withdrawal of fixed penalty notice

27. (5) Once a fixed penalty notice under has been withdrawn the Permit Authority must remove it from any electronic system and any other record systems within a reasonable period of time.

Power to charge a fee and discounts

30-(1) Subject to regulations 31 and 32 **and paragraph (3)**, a Permit Authority may charge a fee in respect of each of the following—

(3) A permit scheme shall include provision as to the circumstances in which fees may be discounted, and **subject to paragraph (8)**, such provision may include—

(7) **Where a Permit Authority is an Approved Authority for the purposes of the Street Works (Charges for Occupation of the Highway) England Regulations 2012 a fee may not be charged for the provision of a permit for works on a street for which a charge falls due as an Approved Authority.**

(8) **A permit Scheme must include discounts for works which take place on streets, subject to designation as traffic-sensitive, but where the works take place wholly outside traffic-sensitive times;**

Modification of enactments

37-(1) The following provisions of the 1991 Act shall be modified as follows in relation to specified works in specified streets.

(2) Section 58 has effect as if—

(a) in subsection 3(d) for “given notice under section 54 (advance notice of certain works) of his intention to execute street works” there were substituted “applied for a provisional advance authorisation for street works to be carried out”; and

(b) subsections (5) to (7A) were omitted.

(2A) Section 64(1) has effect as if—

(a) after “or paragraph 2 of Schedule 3A” there were inserted “or the content, operation, variation or revocation of permit schemes”; and

(b) after “street works” there was inserted “or works for road purposes”.]

ANNEX C: Question response sheet

This consultation (which can be found on the government website under Streetworks : permit schemes : consultation) concerns the amended permit scheme regulations, which we plan will take effect from 2015. The Traffic Management Act 2004 (TMA) Part 3 introduced ‘permit schemes’, to allow local highways authorities (authorities) in England and Wales to introduce a scheme requiring those wishing to undertake works on the authority’s roads to apply for a permit. The TMA 2004 provides the power for the Secretary of State to make regulations covering requirements for permit schemes. A draft Statutory Instrument (S.I) of the amendments to the 2007 Permit Scheme regulations, which reflects the proposed changes, is set out in the main consultation document (at Annex A). The questions which you are invited to answer are set out below in word format for responses.

The first part of this response form seeks information about you / your organisation responding to this consultation:

QUESTIONS ABOUT YOU	RESPONSE
Are you responding as an individual or on behalf of on organisation?	
Which best describes your company or organisation?	
Your Name?	
Your company or organisation?	
Your position in the organisation?	
Your address?	
Your email?	
If you are responding on behalf of an organisation or interest group how many members do you have?	
Do you need your response or personal details to be treated confidentially?	
(In relation to the above question) Please explain why	

THE CONSULTATION QUESTIONS

Consultation - regulation 3

Question 1 - Regulation 3 (Consultation - paragraph 3.2)	Response
Q.1 Are you content with the proposed minor change to the consultation requirements as described above?	

Scheme Evaluation (regulation 4)

Questions 2 & 3 - (Regulation 4 (1) (e) & 16 (a)) (Evaluation) – paragraph 3.4	Response
Q.2. Do you have any comments on the changes to the evaluation requirements?	
Q.3. Are the proposals for evaluation clear?	

Scheme Variations – (regulation 5)

Question 4 - Regulation 5 (Scheme Variation - paragraph 3.6)	Response
Q.4 Do you have any comments on this proposed change?	

Specifying Grounds for refusing a permit – (regulation 9 (10))

Question 5 - Regulation 9 (10) (Grounds for refusing a permit scheme - paragraph 3.7)		Response
Q.5 Do you have any comments on this additional requirement?		

Scheme Conditions - regulation 10

Question 6 (Regulation 10) (Conditions – paragraph 3.8)	Response
Q.6 Do you have any views on the addition of regulation 10 (6)?	

Time limits on Permit Authority – refunds of permit fees – regulation 16 (4)

Question 7 (Regulation 16 (4)) (Time limits – paragraph 3.10)	Response
Q.7 Do you have any comments on this additional requirement?	

Withdrawal of a fixed penalty notice – regulation 27 (5)

Question 8 (Regulation 27 (5)) (Withdrawal of a fixed penalty notice– paragraph 3.11)	Response
Q.8 Do you have any comments on this additional requirement?	

Traffic-Sensitivity – Power to charge and fee and discounts (regulation 30)

Question 9 Regulation 30 - paragraph 3.12 (TSS Discount).	Response
Q.9 Do you have any comments on the provision of this discount?	

General Matters

Question 10 - paragraph 3.15 (Regulation 3 & 4)	Response
<p>Q.10 Is the obligation to comply with Regulations 3 and 4 “before giving effect to a permit scheme” clear and understandable?</p>	

Question 11 - paragraph 3.16 Drafting).	Response
<p>Q.11 Do you have any comments on the <u>actual drafting</u> of the proposed amendments? In particular:</p> <ul style="list-style-type: none"> • Are the amendments (whether consequential or not) clear and understandable? • Are there any aspects which are not? 	

Question 12 - paragraph 3.16 (Other issues).	Response Please specify the regulation concerned.
<p>Q.12 Are there other matters you wish to raise? Is so, please specify the regulation concerned.</p>	

<p>Please provide your completed questionnaire by email to:</p> <p><u>Permit.Schemes@dft.gsi.gov.uk</u></p>	<p>Or by post to:</p> <p>Ann Morley Permit Scheme Approval Process Consultation Third Floor Department for Transport Great Minster House 33 Horseferry Road, London SW1P 4DR</p>
--	---