

PERMIT SCHEMES – SUMMARY OF CONSULTATION RESPONSES

Introduction

Works in the highway, whether by utility companies, local authorities or others, are necessary to ensure the safe and efficient supply of essential utility and transport services on which we all depend. However, these works impose substantial costs on society, principally through disruption and delay to road users. For works by utilities and others with apparatus in the highway alone, these costs are estimated at over £4 billion a year nationwide and some £750 million a year in London alone.

Local highway authorities have a range of tools for the management of these works, and these include the option to develop a permit scheme. Currently a local authority wishing to introduce a permit scheme must not only develop and consult on their proposals to introduce a scheme, but also apply to the Secretary of State for formal approval before any scheme can be operated.

The Government decided to consult on proposals principally to remove the requirement for the Secretary of State to approve such schemes, so that in future the local authority would introduced them under their own powers in line with local needs and required outcomes. Such a change would require amendments to the Traffic Management Act 2004 and the Traffic Management Permit Scheme (England) Regulations 2007. The consultation, which ran for 12 weeks closing on 25th April 2012, received 63 responses by the closing date.

Overview of Responses

The following summary provides a brief overview of key themes emerging from the consultation responses – it is intended to be informative, but not comprehensive in its coverage.

Consultation Response		
Summary:		%
Local Govt & representative bodies	26	41%
Utilities & representative bodies	29	46%
Interested groups and public	6	10%
Regulatory Bodies (Ofgem)	1	2%
Unknown	1	2%
	Total	
	63	
For the proposal	11	17%
For the proposal, but with reservations	5	8%
Against the proposal	47	75%
	Total	
	63	100%

Government Response

On 23 January 2013 the Minister Norman Baker announced the Government proposals and response to the consultation. The Government plans to introduce appropriate changes to the Traffic Management Act by way of a Bill, and resultant changes to the Permit Scheme Regulations, but it is our intention that any change would not come into force until at least 2015.

Summary of Responses

Section A: Questions on the policy proposal for the cessation of the requirement for the Secretary of State to assess and approve a highway authority or highway authorities' application, to develop; implement and revise or halt permit schemes.

A1. Do you agree / not agree with our overall policy aim? A2. Do you have views regarding the expected wider benefits of the proposals as set out in the consultation document?

The majority of respondents disagreed with the overall policy aim, and as such there were limited comments concerning the potential for wider benefits.

Largely authorities largely considered the Government's current role to be crucial in providing not only an important health check, but also confirmation of regulatory compliance. However, a minority of local authority respondents did consider that the proposals met with the Government's localism agenda and as such should be taken forward.

The Local Government Association responded recognising the Government localism agenda and supporting the proposal, stressing the importance of sharing and developing best practice.

While Utility respondents largely recognised the Government's localism agenda, they disagreed with the proposal setting out reasons which included:

- The value of independent scrutiny and its impact on local authority compliance with Regulations.
- The risk of a variety of different schemes being implemented / developed across the country which could lead to increased costs for utilities / contractors and reduced productivity. This had the potential to increased disputes / discussion, instead of everyone working together to reduce disruption.
- Transferring costs from central to local government

Some utilities went further and did provide a number of additional safeguards across consultation responses which included welcoming the opportunity to work closely with government on the development of the proposals this

includes reference for the need for DfT to consider specific issues within the Code of Practice.

It is noted that responses that follow were made in the context that although many respondents disagreed with the overall proposal, they have provided information and views that need to be considered, should the proposal go forward.

Government Response

The Government has listened carefully to the concerns raised in the responses to the consultation. As a result, we have decided that although we maintain the commitment to devolve the approval role to highway authorities, we will not implement it as quickly as originally intended. It is our intention that any change would not come into force until 2015 at the earliest..

Section B – questions on issues related to the proposal and raised in the consultation document.

B.1 Do you consider the proposal to provide ‘template’ permit schemes (for use by local authorities) would be helpful? B2. If you consider that provision of ‘template’ permit schemes would be helpful, what format would be most helpful?

While some Authorities templates could be of value many considered that, with a number of schemes already beyond the draft stage, an actual template may not provide any advantages. There were views expressed that enhanced guidance, based on the experiences of those currently assessing permit schemes on behalf of the Secretary or State, may be useful to help authorities ensure their schemes are compliant with the Regulations and with Guidance,

On the whole utilities supported the idea of developing a small number of ‘template’ permit schemes. This would enable sufficient flexibility for local authorities to choose a scheme which best suits their local circumstances.

NJUG suggested that DfT and HAUC(UK) work together to develop both ‘template’ schemes and a list of model permit scheme conditions incorporating all those conditions which local authorities require, but in a single list and using an agreed wording.

B3. Do you have comments on the proposal to remove the statutory nature of the current Key Performance Indicators?

On the whole both Authorities and Utilities saw little value in continuing with the current set of KPIs, including the current mandatory ones.

Authorities saw there would be some value in further guidance to give authorities help in developing relevant performance data to ensure the scheme meets both the authority’s reporting obligations and so that there was some formal reporting mechanism which provided a consistent approach to ensure the overall aims and objectives of a permit schemes did to become diluted.

Largely the Utilities were in favour of revising the KPIs but not in the reduction of mandatory ones (currently 2) so that there could be consistency of measurement for current and developing permit schemes.

It was also noted by several respondents that there is a potential for the development of the performance scorecard to meet certain reporting criteria and assist authorities in developing a performance regime including annual performance reporting.

B.4 Do you have comments on the proposal to ensure that Local Authorities provide transparent (annual) evaluation of permit schemes?

There was strong support for the regular evaluation of permit schemes and the transparency of that evaluation.

Most utilities supported annual evaluation of all permit schemes stating that it should include assessment of the total costs and benefits of each scheme.

B.5 Do you have specific comments on the proposal for the Secretary of State to retain the power to direct an authority to revoke their scheme if the need arises? In particular, what considerations should inform the Secretary of State's view of whether permit schemes are delivering their objectives cost-effectively and hence whether the Secretary of State should exercise this proposed 'backstop power'?

Authorities pointed to difficulties in having a credible revocation process given the Government's localism agenda, arguing that where a scheme was developed by an authority with its own criteria and within its own boundaries, without external restrictions being imposed, it was not clear how it would be judged to need revocation.

Utilities strongly supported the retention of the power of the Secretary of State to direct an authority to revoke their permit scheme if the need arises, and for evidence to be obtained for such actions using an Independent Appeals Mechanism.

B.6 Do you have comments on the plans for there to be a fundamental review of Guidance and related documents to support the development and operation of 'permit schemes'?

There were mixed responses to this question, but overall it was seen that there would be value in a review of the Guidance and related documents.

Authorities largely considered that the current guidance could be supplemented with some additional data and assistance from Government would help authorities minimise their costs in developing an appropriate permit scheme.

The Utilities were more supportive of a fundamental review of Guidance and related documents to support the development and operation of permit schemes, provided that HAUC (UK) was fully involved.

Government Response

In light of the responses received, we will we will look at revising the Guidance including the development of future schemes through the use of template schemes and in relation to evaluation. We will also work to amend KPIs to more meaningful measures, which may be more readily monitored and compared.

We will continue to work with the sector to develop a list of standard permit conditions which will enable quicker application and approval of Permit applications and assist those working on site to understand and conform to the permit requirements.

Section C – Questions related to delivery of the proposals using a Legislative Reform Order (LRO) (the LRO can be found at the end of Chapter 3 and as Addendum in the accompanying document booklet.)

C1. Do you think the proposals will remove or reduce burdens as explained in paragraph 2.18 above and elsewhere in this consultation document?

Most respondents were united in their view that the savings to Government of the proposal would pass to local authorities so the burden was moved rather than removed or reduced.

There was also a view that there would be the likelihood of increased legal challenge by utilities on authorities approved schemes and this would involve both groups in additional costs related to resolving these disputes. It was argued that this was contrary to the Government's drive to reduce the cost burden on business.

C2 . Do you have views regarding the expected benefits of the proposals of this consultation document, and addressed in the initial impact assessment attached at Addendum D?

Largely respondents did not perceive there would be benefits either to Authorities or indirectly to the user as there would be a transfer, rather than reduction of both costs and burden.

C3. If there is any empirical evidence that you are aware of that supports the need for these reforms. Please provide details here?

Authorities considered there was evidence that the current system was working and there were minimal benefits from the changes set out in the consultation document.

Utilities considered that there is little robust evidence that the current permit schemes have delivered significant benefits over and above the enhanced Noticing provisions, despite the additional costs and that reviews of existing schemes did not fully reflect the total costs and benefits, as utility costs are not measured or reported upon.

C4. Are there any non-legislative means that would satisfactorily remedy the difficulty which the proposals intend to address?

Utilities cite the Major for London 'Code of Conduct' as having delivered significant benefits through voluntary measure. They also cite the developing performance scorecard as providing a non legislative way

Reference was also made to the Performance Scorecard, which has the potential to provide consistent measurement of key performance indicators around road and street works, and in future could also enable local authorities to better perform their Network Management Duty.

Some Authority respondents suggested that to 'do nothing' – retaining the Secretary of State as part of the permit scheme approval process meet the requirements of not needing a legislative change.

C5. Are the proposals put forward in this consultation document proportionate to the policy objective?

It was largely utilities who responded suggesting that the proposals were not proportionate arguing the required benefits could be achieved by non-legislative means. Concerns raised centred on the potential for the proliferation of different schemes, with associated substantial increases in costs, increased administrative burden and reduction in productivity.

C6. Do the proposals put forward in this consultation document, taken as whole, strike a fair balance between the public interest and any person adversely affected by it?

The majority of respondents considered the proposals were highly likely not to strike a fair balance, arguing that public interest would not be served by adding time and cost to local authority preparation and approval of a permit scheme and with the potential to increase utility bills.

It was again noted that there was the potential for legal challenges to developing schemes. There was also the possibility that the Government's stated aims and objectives within the Traffic Management Act will be adversely affected by the removal of the regulatory approval, potentially conflicting with the network management principle and placing additional pressures on local authorities who are already burdened by a disproportionate amount of the cost.

C7. Do the proposals put forward in this consultation document remove any necessary protection?

Most respondents viewed that the proposals did remove a protection. The value of the independence of DfT's scrutiny of developing permit schemes was stressed. It was noted that all permit schemes approved to date have had substantial changes made following initial review by the DfT and prior to approval, to ensure clarity and compliance with the Permit Scheme Regulations and Code of Practice.

It was also argued that the proposal has the potential for diluting the significance of permit schemes in terms of the value in managing an authority's highway network.

C8. Does the proposal as put forward in this consultation prevent any person from continuing to exercise any right or freedom which he might reasonably expect to continue to exercise? If so, please provide details.

Utilities argue that there is the potential risk to utilities being able to perform their statutory obligations and meet customer requirements, if the devolvement of permit scheme approval powers to local authorities takes place without appropriate safeguards in place. Utilities could be forced to challenge any scheme that was legally non-compliant, with the devolvement of approval powers to local authorities, there is a much greater likelihood of an authority proposing onerous conditions.

C9. Do you consider the provisions of the proposal to be constitutionally significant?

There was very limited response to this question.

C10. Do you agree that the proposed Parliamentary resolution procedure (as outlined in paragraphs 3.47 above) should apply to the scrutiny of this proposal?

Some utility respondents suggested that these proposals be subject to the Affirmative Resolution Procedure, and therefore scrutiny by both Houses of Parliament. They argued that this was a fundamental change to the Permit Scheme Regulations, with the potential for far-reaching consequences for utilities, their customers, authorities and the public as a whole, and therefore full scrutiny is essential.

C11. Do you have any comments on the content and wording of the actual draft Legislative Reform Order as set out in the consultation document at Addendum B?

Responses were received arguing that the Order should set out that an officer assessing and approving a draft permit scheme should be of a level equivalent to or more senior than anyone within the team developing the scheme, and should be independent from that team. Also that in case of joint schemes, each individual authority should go through a separate approval process, and therefore the Order should specify what should happen in the case of joint or common permit schemes.

C17. (Misprinted - C12.) Do you have any comments on the use of a Legislative Reform Order which have not been covered above?

There were limited comments to this question.

NJUG stated that they did not believe a Legislative Reform Order should be made for these proposals on the grounds that the necessary protection precondition has not been satisfied.

Government Response

After careful consideration of the responses, we have concluded that the use of an LRO is not the appropriate mechanism for introducing these changes. We will therefore seek to include them in a Bill, when a suitable legislative opportunity arises. Any changes will not come into force until at least 2015.

Section D - Questions on the permit scheme amendment Regulations

D1. Do you agree that the proposed draft Amendment Regulations (provided in the document booklet) will achieve the aims set out in this document?

Authorities who responded to this question agreed that the proposed draft Amendment Regulations will achieve the aims.

The Utilities however did not believe that the proposed draft Amendment Regulations will achieve the proposed aims, without significant amendment. A number of specific amendments to the Regulations were suggested in

particular, the need to ensure all schemes comply with the Permits Code of Practice, which should be brought in line with the 3rd Edition (current) Co-ordination Code of Practice.

D2. Amendments to regulation 3: This regulation would be amended to require that a permit authority consults those persons set out in regulation 3(2) “prior to making an order giving effect to a permit scheme”. What are your views on this amendment? (Please note the Secretary or State will remain as one of those each authority will need to consult where they bring forward a permit scheme)

Authority and Utility respondents endorse the requirement to continue to consult with the DfT and would be guided by any comments received as a result of that consultation, but additionally they pointed out that without resources available within DfT to undertake appropriate scrutiny, the DfT’s ability to effect positive changes to a draft scheme will be limited.

D3. Amendment to regulation 4: This regulation will be amended so that when an order giving effect to a scheme is made-but before that scheme comes into effect-the authority must “publish” (instead of supply the Secretary of State with) information on the scheme. Do you have any views on this change?

Of those who responded there was an overall welcoming of this requirement to publish the information on the scheme. In addition it was suggested that a minimum timescale between publication and implementation of the scheme be introduced to enable the maximum chance for utility and local authorities to put in place appropriate measures to maximise compliance – 3 months was suggested.

D4. Amendment to regulation 4(2): There will be a requirement to evaluate schemes, both once a scheme has operated for 12 months and thereafter. Do you have any views on this change?

Authorities largely viewed that the local authority should evaluate the scheme as it would any other service delivery process, but that they should develop their own evaluation as part of the scheme design.

Utilities supported annual transparent evaluation of all permit schemes. Further they argued this must incorporate an accurate assessment of the total costs and benefits of each scheme.

D5. Amendment to regulation 17: This regulation will be amended to reflect the requirement to notify those persons (set out in regulation 3(2) (list of consultees)) when an order giving effect to a permit scheme is made by the permit authority. Is this proposed amendment clear?

Largely it was Utilities who responded to this question welcoming its inclusion and its clarity.

And finally – scope was provided for any other views / evidence not covered by the above questions.

Little new information was provided with many providing summaries including a further call on Government to withdraw this proposal.

Government Response

The Government has concluded that it is appropriate for all permit authorities to produce an annual evaluation of their scheme, and intends to introduce amending regulations alongside the Bill to remove the Secretary of State approval role.