



Department
for Transport

Consultation on the requirement for existing schemes to adopt the 2007 Permit Scheme (England) Regulations: Consultation Response

March 2015

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Foreword

The Government undertook a detailed consultation on a number of amendments to the 2007 Permit Scheme (England) Regulations, which closed in September 2014. The questions in that consultation were in addition to consequential changes the Government will introduce as a result of the Infrastructure Act 2015 related to the operation of Highways England, and the 2015 Deregulation Bill on the approval process for Permit Schemes. The Government response to that consultation was published on 9th February 2015.

As a consequence of that consultation the Government proposed that on (by) 1 October 2015 **all** permit schemes should be required to comply with the 2007 Permit Scheme (England) Regulations as amended by the 2015 Permit Scheme Amendment Regulations. This differed from the previous proposal which was for the amendments to only affect new and varied schemes.

The request for views on this issue was launched on 9 February 2015 and closed on 9 March 2015. This document is the Government's response to that consultation. We received 53 responses which included 35 from utility companies, contractors and their representative bodies, and 18 from highways authorities in England and their representative bodies. No responses were received from members of the public.

Requirement for Existing Schemes to adopt the amended 2007 Permit Scheme (England) Regulations

Question 1

- 1.1** We consulted on amendments to the 2007 Permit Scheme (England) Regulations for 3 months in 2014, which closed in September. From the responses on the Government proposed to require all permit schemes to comply with the amended regulations. We sought further views on this, from 9th February until 9 March 2015. 53 responses were received from the Street Works sector, with none from members of the public.

Question 1

Are there any operational reasons that would prevent existing schemes adopting the amended regulations by 1 October 2015?

Table 1.1 Responses from Utilities, contractors and their representative bodies

Total utility responses	Responded with concerns as a % of total	Significant Issues
35	0%	0. % All respondents supported the proposal.

Table 1.2 Responses from Highway Authorities and their representative bodies

Total authority responses	Responded with concerns as a % of total	Significant Issues
18	100%	As described below.

- 1.2** The consultation responses demonstrated full support from utilities and contractors. All Authorities raised concerns related to operational issues relating to adopting the regulations as amended on or by 1 October, these were:

- **That transitional arrangements for existing SIs were unclear** –the transitional arrangements are to be explained in the Statutory Instrument which will amend the 2007 Permit Scheme Regulations. Officials will also write to the joint Chairs of the Highway Authorities and Utilities Committee

(England) (HAUC (England)) on the practicalities of transitional arrangements.

- **Those already operating schemes were concerned that the term ‘order’** was unclear as a means of enabling authorities to operate a scheme. We have provided the definition of an ‘order’ in the Amendment regulations.
- **That the date was too soon to undertake all required processes, especially if they needed to undertake stakeholder consultation.** Schemes were informed of the proposed change last year and we believe that the time provided gives will be sufficient for authorities to make the changes. We can also confirm that authorities will not be required to undertake formal consultation on the changes required to comply with the amended regulations.
- **Adopting the changes would weaken local determination** – We do not accept that the changes will affect local determination. Permit schemes are not obligatory, but where implemented must conform to the regulations. Not requiring existing schemes to move to the amended regulations would limit the benefits we believe the changes will bring.

Question 1A

- 2.1** We asked a further question for those who had responded to the 2014 consultation on amendments to the regulations (Government response published 9 February 2015 and can be found at - https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/66141/permit-schemes-consultation-response.pdf).

Question 1A

If you provided a response to the previous consultation would your response have differed in light of this proposal? If so, in what way?

Table 2.1 Responses from Utilities, contractors and their representative bodies

Total responses received	Would not have responded differently - as a % of the total	Significant Issues
35	2.9%	None

Table 2.2 Responses from Highway Authorities and their representative bodies

Total responses received	Would have responded differently - as a % of the total	Significant Issues:
18	33%	As described below

2.2 Most authorities who provided comments to this question were already operating schemes, and highlighted that they had responded to the previous consultation on the premise that the amendment regulations would not apply to them. They raised the following issues related to proposed changes that they considered might adversely impact on their existing schemes:

- **the effect changes might have on the original cost benefit analysis for a scheme** - the Department does not expect schemes to remain static, some schemes have already revised their fee structure, therefore a scheme's original cost benefit analysis will naturally evolve as it develops;
- **the original approval for their scheme by statutory instrument, which brought it into operation using the 2007 regulations, and was therefore was not subject to change** - the transitional arrangements are to be set out in the Amendment regulations;
- **the lack of detailed information on how the changes would be introduced and operated** - the Department is working with a sector 'Task Group' to develop Statutory Guidance, which will support the amendments to the regulations. The sector may also produce 'Codes of Practise' to support scheme development; and
- **operational issues raised by authorities.** Officials will discuss these with HAUC (England) and work with the sector to assist the transition to the use of the amended regulations.

Government response

2.3 The aim of making the amended regulations applicable to all schemes is to significantly improve consistency in future scheme operation. The change will remove the need for works' promoters to comply with a variety of differing conditions and requirements across authority borders which can add complexity, confusion and administrative costs.

2.4 We consider that it will also support and simplify the means by which authorities are able to join 'common' or 'joint' permit schemes. Requiring all schemes to adopt the amended regulations means that consistency will be improved nationally, and all schemes will be subject to these and any other further amendments to the regulations, rather than using the set of regulations in force at the point their schemes came into operation.

The 2007 Regulations are not being replaced, but amended and these will contain transitional arrangements. Therefore existing schemes still operate under the 2007 regulations as amended in 2015.

The Government will therefore, subject to parliamentary process, make the necessary changes to the 2007 Permit Scheme (England) Regulations requiring all authorities to adopt the Amendment regulations on or by 1 October 2015.