



Department
for Transport

Amendments to the Traffic Management Permit Scheme (England) Regulations 2007: Consultation Response

February 2015

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

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Foreword

Street works in the highway, whether undertaken by utility companies; highway authorities or their contractors are a vital part of delivering essential public services. They also enable developments and improvements to the road network to ensure infrastructure remains in a fit and proper state of repair.

Provisional estimates for Quarter 3 (July to September) 2014 indicate that the overall level of traffic in Great Britain was 2.2 per cent higher than in the same period of 2013. This continues a trend of slow steady growth in traffic levels since early 2012, with average speed on local 'A' roads in England during the weekday morning peak of 24.3 mph - 0.4% slower than in the year to June 2014. Average speeds have continued to fall over the last 2 ½ years and street works can contribute to delay and disruption on the road network and frustration to local and business drivers, as well as other road users.

Streetworks can therefore lead to additional costs to society, principally through disruption and delay to road users. For works by utilities alone, these costs are estimated at over £4 billion a year nationwide and some £750 million a year in just London. Local highway authorities have a range of tools for the management of these works, and these include the option provided under the 2004 Traffic Management Act, to develop a permit scheme. It is the Government's intention that, by 2015, a highway authority wishing to introduce a permit scheme will no longer need the Secretary of State's approval before a scheme can be operated.

As a consequence of this change and to extend the provisions to include 'Highways England' which will replace the Highways Agency, changes will be made to the 2007 Permit Scheme Regulations (England). Additionally the Government sought this opportunity to make a number of additional changes to the 2007 Permit Scheme Regulations (England) with the aim of improving consistency of schemes.

The Government consulted on the additional, non-consequential, proposals to amend the permit scheme regulations in the summer of 2014. The consultation on changes to the permit scheme regulations ran from 12 August until 25 September 2014.

There were 12 questions seeking comments on our proposed changes. The questions were largely related to specific aspects of the regulations and were principally of interest to authority and utility practitioners. There were 79 single responses received. There were some 27 from utilities and 37 from authorities as well as from their representative organisations. The other responses were from interested groups or private individuals. Not all respondents provided comments against all the questions and many wrote in support of the views provided by their sector representative body. This summary provides an overview of key themes emerging from the consultation responses – it is not intended to cover every individual response or issue.

Government Response

On 9 February 2015 the Minister Robert Goodwill announced the Government response to the consultation. Having considered issues raised in the responses provided to the consultation the Government plans to amend the Permit Scheme Regulations (England) 2007 for all new schemes with the aim of bringing them into effect in 2015.

In addition the Government has considered the benefits that could be achieved if existing schemes were also required to use the amended regulations in their entirety. It is therefore proposed to seek further stakeholder views on this in early 2015, with the aim of achieving maximum consistency through use of the amended regulations by all Permitting Authorities.

Proposed Non-Consequential Amendments to the 2007 Permit Scheme Regulations - Summary of Consultation Response by Question

Question 1 – Consultation for Permit Schemes – regulation 3 (1) (g) and (3) (3)

- 1.1** We propose to amend Regulation 3 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), the addition of a new sub-paragraph at (g) requiring any additional persons mentioned in the Permit Scheme Guidance to be consulted at the same time. Regulation 3 will be further amended at 3 (3) requiring the consultation to be sufficiently detailed so that respondents can provide meaningful input.

Question 1

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

Issues raised

- 1.2** There were 73 responses to this question with over two third generally supportive with respondents considering that the additions were reasonable.
- 1.3** Utilities' respondents specifically sought an additional requirement for highway authority consultations to be for a minimum period of 12 weeks. Other respondents sought that permit schemes were extended to cover those who applied to undertake works by using licences under s50 of the New Roads and Street Works Act.

Government Response

- 1.4** In conducting consultations, highway authorities are required to meet both these regulations and the standards set by that individual authority. They may also wish to have in mind the guidelines published by the Cabinet Office in October 2013 at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/255180/Consultation-Principles-Oct-2013.pdf . There is no longer a set requirement for a 12 week consultation period, but authorities are responsible for ensuring consultations are reasonable and proportionate. It is proposed to implement the amendments as drafted.

Question 2 and 3: Scheme Evaluation – regulations 4 (i) (e) and 16 (a)

- 2.1** We proposed amending the procedural requirements for commencing new or making variations to permit schemes related to the costs and benefits. This is to ensure that future scheme evaluation will demonstrate the scheme's benefits in relation to its costs.
- 2.2** The proposed change strengthens 4 (1) (i) so that Authorities will need to consider responses, 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 all the regulations and had regard to the Guidance.
- 2.3** We proposed that authorities continue to evaluate their schemes' effectiveness after the first 12 months of operation, and to publish that evaluation, and then to publish an evaluation every three years thereafter.

Question 2

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

Question 3

Are the proposals for evaluation clear?

Issues raised

- 2.4** There were over 60 responses to this question. 12 largely supported the change, but there was a widely held view that published evaluation should be more frequent than every three years as set out in the proposal – many of those seeking that evaluation should be after every 12 months each scheme operated.

Government response

- 2.5** The requirement for authorities to demonstrate to their stakeholders that their schemes are effective is essential. All schemes should be operated in an open and transparent manner. However, we consider that an on-going requirement to publish an evaluation every 12 months to be excessive. Therefore, the regulation will be amended to require a published evaluation after every 12 months of operation for the first 3 years and then to publish evaluation every three years of operation thereafter.

Question 4: Scheme Variations – regulation 5

- 3.1** We proposed that where an existing scheme is varied (other than typographical, formatting and grammar amendments (regulation 5 (3)) then the entirety of the scheme would need to reflect the current regulations and statutory guidance. So that when varying an existing scheme, the authority would then be required to comply with current regulations and statutory guidance. The aim of this proposal is to increase scheme consistency.

Question 4

Do you have any comments on this proposed change?

Issues raised

- 3.2** Many respondents sought clarification of when a change to a scheme was considered a variation which would result in the requirement for that scheme to be moved to adopt the amendments contained in the regulations and to move to using the revised statutory guidance.

Government Response

- 3.3** We have considered the issues raised in the responses carefully, and we propose to seek further views in early 2015 on achieving maximum consistency through requiring all permitting authorities to use the amended regulations from a specified date. We believe this approach will benefit works promoters as they will no longer have to comply with differing requirements in different authorities – adding complexity, confusion and administrative costs.

Question 5: Specifying Grounds for refusing a permit – regulation 9 (10)

- 4.1 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 regulation 9 (10) that will require a permit scheme to set out the grounds which will be used for refusing a permit.

Question 5

Do you have any comments on this additional requirement?

Issues raised

- 4.2 Respondents requested that we consider the wording of this regulation again. In particular that the word ‘clearly’ is added to 9 (10).

Government Response

- 4.3 We consider the word ‘clearly’ is subjective and it will not be included. However we are looking again at the overall wording of this regulation, although the spirit of this regulation will remain.

Question 6: Scheme Conditions – regulation 10

- 5.1** 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 proposed that future schemes should use common wording for conditions. The standard conditions which will be inserted into the Statutory Guidance have been developed, consulted on and agreed by the Highways and Utilities Committee (HAUC (England)), following consultation with stakeholders and the Secretary of State.

Question 6

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

Issues raised

- 5.2** Utilities strongly support this move. Of over 30 authorities who responded there was a good deal of support for the notion of standard conditions, but many responses were qualified. The main concern from authorities being related to the effectiveness of existing 'common' permit schemes where new authorities joining those scheme would be using different conditions. We were also asked to consider removing the word 'substantially'.

Government Response

- 5.3** The Government has considered the comments raised in the responses. As the issues raised are linked to our proposal for all schemes to move to the amended regulations in their entirety we propose to seek further views on this, in early 2015, with the aim of achieving maximum consistency through common use of the amended regulations.
- 5.4** We are still considering the applicability of the use of the word 'substantially'.

Question 7: Time limits on Permit Authority – refunds of permit fees – regulation 16 (4)

- 6.1 In regulation 16 we have added a paragraph (4) that will require a permit authority to refund the full permit fee where they have cancelled the permit and the reason for the cancellation was not the fault of the applicant.

Question 7

Do you have any comments on this additional requirement?

Issues raised

- 6.2 There were requests for some clarification of the wording in the amended regulation, and this included using the word revoke rather than cancel.

Government Response

- 6.3 We have looked again at the wording of this regulation, but we intend that the spirit of the amendment will be retained.

Question 8: Withdrawal of a fixed penalty notice – regulation 27 (5)

- 7.1 In regulation 27 we proposed to add 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 had been withdrawn – and to do this in a reasonable period of time.

Question 8

Do you have any comments on this additional requirement?

Issues raised

- 7.2 Although utilities sought that the notice was withdrawn for accounting purposes, authorities were concerned that records needed to be kept to reflect that the fixed penalty notice had been issued. Authorities also considered that such a record helped monitor performance.

Government Response

- 7.3 In light of the responses received, we consider that this proposed change will not be implemented and that records of fixed penalty notices, even when withdrawn, will remain. We propose to ensure that statutory guidance seeks that authorities reflect the reason for the withdrawal of fixed penalty notices when communicating with the utility concerned.

Question 9: Traffic-Sensitivity – Power to charge a fee and discounts – regulation 30

- 8.1** We propose to make two amendments to this regulation. Firstly, in regulation 30 (7), we have clarified that should a ‘lane rental’ charging regime be 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. Secondly, there is currently a requirement for discounts to works promoters in specific circumstances. We propose to extend this (new 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.

Question 9

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

Issues raised

- 8.2** Utilities strongly supported these changes and highway authorities were not opposed in principle, but some expressed concern that an additional discount could affect the cost benefit of existing schemes.

Government Response

- 8.3** We propose to include this amendment. We are not imposing a specific discount level, but are likely to reflect in statutory guidance that it should be aligned to the fee for similar works on non-traffic sensitive streets. We believe that this change will promote behaviour to reduce the disruption caused by street works, but do not consider that it will significantly affect the cost benefit analysis.

Question 10: Consultation and procedural changes – regulations 3 and 4

- 9.1** We invited comments on whether the amended obligations in Regulations 3 and 4 (consultation and procedural requirements for permit schemes) were clear and would support development of schemes.

Question 10

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

Issues raised

- 9.2** Respondents were largely agreed that it was clear.

Government Response

- 9.3** We will make the amendments.

Question 11: General Matters

Question 11

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?

Issues raised and Government response

- 10.1** There were few comments raised in respect of Question 11. We were advised on some possible typographical errors and we will address these.

Question 12 – Others matters you may wish to raise

Question 12

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

Issues raised and Government response

- 10.2** A number of other detailed issues were raised largely by utilities and their representative bodies, not specific to this consultation. These will be considered in the future.

Other issues

Additionally, some authorities requested that we consider making permit fees inflation proof. No action on changes to the overall fee structure for permits is being considered at this time, but this too may be considered in the future.