



Cabinet
24 August 2015

Report from the Chief Operating Officer

For Action

Wards affected: ALL

Street Works Permit Scheme Regulation Changes from October 2015

1.0 SUMMARY

- 1.1 This report explains the changes to the Street Works permit Scheme Regulations from October 2015, the implications for London Borough of Brent and, in view of the timescales, seeks the delegation of the decision to approve the details of the new scheme to the Chief Operating Officer, in discussion with Lead Member for Environment.
- 1.2 The London Permit Scheme (LoPS) is a common scheme which is currently operated across all of London by TfL and the London Boroughs. The existing scheme was brought into operation on the 11th January 2010 under Statutory Instrument 2009 No. 3142, and currently each authority within London has its own Statutory Instrument to operate the scheme.
- 1.3 LoPS is designed to control access to road space on the authority network with all works promoters having to secure a permit for their works. Since its introduction, LoPS has added additional rigour and control to the management of street works and has become an essential element in the co-ordination of works in order to minimise disruption arising from those works and in smoothing traffic flow.
- 1.4 Between 12th August and 25th September 2014, the Department for Transport (DfT) consulted on amendments to the existing regulations on a number of issues, including whether to remove the Secretary of State from the approval process of future schemes. In early 2015 they published their response to that consultation, stating that they were to seek further stakeholders' views on the matter. In January 2015 they undertook a further consultation which proposed that the amended regulations would apply to both existing and future schemes.

1.5 On the 9th of February 2015 DfT announced their response to the consultation and that they intended to bring into effect new regulations. These regulations were made on the 26th March 2015 and come into force on the 30th of June 2015 and the new regulations will require LoPS members to change LoPS to comply with the amended regulations by the 1st Oct 2015.

1.6 This paper sets out the implications for LoPS and what actions are required to be completed to ensure that LoPS members comply with the new regulations and LoPS continues to operate as a common scheme.

2.0 RECOMMENDATIONS

2.1 That Cabinet note the contents of the report and the 1st October 2015 deadline for the London Permit Scheme to comply with the new Traffic Management Permit Scheme (England) (Amendment) Regulations 2015

2.2 That Cabinet delegates the authority to sign the order to the Chief Operating Officer in discussion with the with Lead Member for Environment, to give effect to the amended London permit scheme when it becomes available

3.0 LEGISLATION

3.1 The Deregulation Act 2015 (the 2015 Act), which received Royal Assent on the 26th March, removes the requirement for permit schemes to be approved by the Secretary of State and given effect to by Statutory Instrument (SI). The 2015 Act (Schedule 10, Part 2, paragraph 11) amends the Traffic Management Act 2004 to enable authorities (local highway authorities or strategic highway companies) to approve their own schemes and to vary or revoke existing schemes.

3.2 The 2015 Act provides that a scheme, which previously had effect by virtue of an order (an SI) made by the Secretary of State under s.34 (4) of the Traffic Management Act 2004, is from 30th June 2015 to be treated as if it had been made by the highway authority by order under section 33A (2) of that Act. Each local highway authority (permit authority) will need to make, vary, or revoke its permit scheme by order, so as to ensure that by 1st October 2015 that scheme is in compliance with the Traffic Management Permit Scheme (England) Regulations 2007 (“the 2007 Regulations”), as amended by the Traffic Management Permit Scheme (England) (Amendment) Regulations 2015 (“the Amendment Regulations”).

3.3 The Amendment Regulations provide, amongst other things, a definition of ‘order’, by which permit schemes can be made, varied or revoked by a permit authority. Despite the requirement that all schemes adopt the changes brought in by the Amendment Regulations by 1st October 2015, the Amendment Regulations exempt existing permit schemes from undertaking most obligations which arise for new schemes, such as detailed stakeholder consultation, before the amendments come into effect (other than giving 4 weeks’ notice of the implementation date). The mechanism for dealing with issues related to interpretation of the regulations has not changed.

4.0 IMPACT OF THE AMENDMENT REGULATIONS ON BRENT

- 4.1 LoPS is a common scheme and has been adopted by all London authorities. This ensures that the same permitting rules apply across all of London and it is desirable that this arrangement continues.
- 4.2 The Amendment Regulations require LoPS to be amended to comply and to ensure LoPS remains a common scheme each authority will need to make an order adopting the amended LoPS.
- 4.3 If Brent does not act to amend LoPS then the scheme would be a non-conforming scheme and would be liable to challenge from work promoters. This would create a significant risk to Brent's ability to control works across borough and manage the network.
- 4.4 Therefore the main impacts of the amended regulations (i.e. the 2007 Regulations as amended by the Amendment Regulations) are;
- LoPS members need to work together to amend the existing version of LoPS to ensure it complies with the new regulations
 - All LoPS members need to ensure that the amended scheme document is given effect by an order and signed by a person authorised by the relevant LoPS authority to give effect to the amended permit scheme
- 4.5 TfL commenced consultation with utility companies on 14th July. The consultation period closed on the 11 August 2015 and comments have been received from three separate utility companies. All the points raised were discussed at a Joint Working Group on the 12th August with the final document agreed by the Business Task Force on 17th August. All London Authorities will sign up to the document at an Operational Committee on the 25th August. LoPS is a Common Scheme agreed and operated by all London Authorities and cannot be changed without full consultation.

5.0 FINANCIAL IMPLICATIONS

- 5.1 The cost associated with implementing the recommendations of this report is anticipated to be insignificant and will be met from Transportation's budget. This cost may go up, should Brent not conform to the changes in regulations.
- 5.2 As a result of these changes in regulations, the Brent scheme may encounter a possible loss of income resulting from a mandatory discount on permit fees for activities that take place on traffic sensitive street, but wholly outside of traffic sensitive times. As agreed with the other London Permit Authorities, Brent's current scheme already makes a provision for this discounted rate. In all likelihood, the discounted rates will only apply to minor activities.
- 5.2 On the assumption that there is a significant increase in utility companies managing their work more efficiently, it would entitle them to the discounted rate. Brent may have a reduction in minor permit application fees estimated at under £10k. This figure is based on every minor permit granted last year for activities on type 3 and 4 traffic sensitive streets being charged at the discounted rate.

6.0 LEGAL IMPLICATIONS

- 6.1 As in the current guidance, Brent as a Permitting Authority will need to inform stakeholders of the amendments made to the scheme by 'notice' at least 4 weeks prior to the implementation date plus 4 weeks consultation by TfL.
- 6.2 Regulation 14 of the Amendment Regulations (as described in above paragraph 3.2) provides the 'transitional' arrangements and it is set out in two parts. Regulation 14(1) requires that by 1st October 2015 Permit Authorities must ensure that existing permit schemes comply with the 2007 Regulations, as amended. The effect of Regulation 14(2) is that an authority with an existing scheme does not have to consult just to make the changes needed to comply with the amended regulations.
- 6.3 DfT guidance emphasised that Regulation 14 of the 2015 amended regulations says that existing permit schemes must be in compliance with the amended 2007 Regulations by 1 October 2015. Schemes requiring amendment will only be in compliance once the necessary amendments have been made. The Traffic Management Act 2004 s36 (as amended) requires those amendments to be made by Order. This means the Order making the amendments needs to have been made / signed by 1 October 2015.
- 6.4 TfL has consulted with their solicitors' department concerning the changes to LoPS and the document has been update with their recommendations. See Appendix 1 for amended LoPS document.
- 6.5 On the 16th June 2015, all Thirty Two London Boroughs who operate the LoPS met at Westminster City Hall and confirmed the proposed changes required and that TfL should represent them when discussing the changes with the utilities.

7.0 DIVERSITY IMPLICATIONS

- 7.1 The proposals in this report have been subject to screening there are considered to be no diversity implications that require partial or full assessment. The London Permit Scheme does not have different outcomes for people in terms of race, gender, age, sexuality or belief.

8.0 Risk

- 8.1 There is a risk to Brent as the Highway Authority if the required changes are not implemented by the 1st October 2015. Brent would not be able to operate a Permitting Scheme and would be required to carry out a full 3 month consultation before implementing the new scheme.

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