EXPLANATORY MEMORANDUM TO

THE STREET AND ROAD WORKS (AMENDMENTS RELATING TO ELECTRONIC COMMUNICATIONS) (ENGLAND) REGULATIONS 2020

2020 No. 122

1. Introduction

1.1 This explanatory memorandum has been prepared by the Department for Transport (DfT) and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This statutory instrument amends legislation relating to street and road works to support the implementation of Street Manager. Street Manager is a new digital service for planning, managing and communicating street and road works. It also makes other amendments to support more real-time updates of works start and stop information; to the definition of major works to prevent incorrect classification and fees; to the time periods relating to road restrictions; and to remove the requirement for fixed penalty notices to be in PDF format and/or sent by post.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 As the instrument is subject to negative resolution procedure there are no matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business at this stage.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is England.

5. European Convention on Human Rights

5.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

6. Legislative Context

6.1 Street works are carried out by utility companies (water, gas, electricity and telecommunications) on the public road network to install, repair or maintain services. Road works are carried out by the local highway authority to maintain the roads or, for example, to install cycle or bus lanes. Local authorities own and manage the local road network. Highways England owns and manages the strategic road network.

6.2 The primary legislation relating to street works is Part III of the New Roads and Street Works Act 1991 (the 1991 Act) which set up a system for utility works to give notice

to the relevant highway authority when they were working on the local road network. Utilities also need to send notices to Highways England when they want to work on the strategic road network.

6.3 Part III of the Traffic Management Act 2004 (the 2004 Act) introduced a network management duty for highway authorities and permit schemes. Permit schemes require pro-active application from both utilities in relation to street works and local authorities in relation to their own road works. Permits need to be approved before works can begin so that works can be effectively managed and coordinated and a highway authority can meet their network management duty. A range of secondary legislation is in place to implement the requirements of the 1991 Act and the 2004 Act including the Street Works (Registers, Notices, Directions and Designations) (England) Regulations 2007; the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009; the Street Works (Fixed Penalty) (England) Regulations 2007 (all made under the 1991 Act); the Traffic Management Permit Scheme (England) Regulations 2007 (made under the 2004 Act).

6.4 The 'new' permitting system under the 2004 Act and the 'old' noticing system under the 1991 Act operate as parallel systems. Some aspects of the permitting system replace aspects of the noticing system. However, some provisions of the 1991 Act still apply to works under both permit schemes and the noticing system. Section 37(13) of the 2004 Act provides a power to modify the 1991 Act in so far as it relates to permit schemes to support the implementation of permit schemes and to enable consistency across the two systems. Almost 90% of highway authorities now operate permit schemes as these are considered to be a much more effective way of managing street and road works and reducing their impact on congestion.

7. Policy background

What is being done and why?

7.1 It is estimated that there are around 2.5 million street and road works carried out in England each year, but there is no single source of data available. There are no national, publicly available statistics on how many works there are, or other information such as location, duration, type of works, defect rates etc. Street works and road works can cause significant disruption to people's journeys and congestion which are estimated to cost the economy around £4 billion, although this study itself was carried out in 2004. The DfT has been unable to update the economic assessment due to lack of data.

7.2 As noted above, street and road works are a heavily regulated area to which a range of primary and secondary legislation applies, as well as statutory and non-statutory guidance. The aims of the legislation are to ensure effective planning and coordination of works, ensure safety and ensure that the road is reinstated properly after works have been completed. The legislation gives a range of powers to highway authorities to enforce the legal requirements through inspections and penalties. It also requires a number of notifications and registrations to support the operation of the regime.

7.3 The Government has been encouraging all authorities to have permit schemes as these are considered to be a much more effective way of managing works. By June/July 2020, we expect all but two or three authorities to have a permit scheme in place.

7.4 The Act 1991 originally set up a notifications system which was based on technology and working patters of the day, e.g. fax machines and people based in offices, 9-5,

Mon-Fri. Later in the 1990s, this system was updated to use electronic notifications (Electronic Transfer of Notifications (EToN)). The DfT started to issue a technical specification which set out a schema for data to be sent between authorities and utilities companies. Version 6 is the extant specification that was issued in 2013. All authorities and utilities are required to use EToN, either via regulations in relation to noticing schemes or permit scheme orders for permit scheme areas. The industry is therefore used to using a common system.

7.5 Private sector developers have developed software that meets the technical specification and license it to authorities and utilities. Contractors working on behalf of both authorities and utilities also license EToN software. Over the years, the market has reduced and there are now only 4 main providers. Costs of licensing are large – the Joint Authorities Group estimate that local authorities alone spend £7m per year in licence costs. They also incur costs for additional hardware and training etc. Data is not shared around the organisation, nor is it shared externally. Data is often locked into these EToN products and developers can charge additional amounts for access to it or to run bespoke reports. Some EToN products are also still based on software code that was in common use 20 years ago but is now out of date.

7.6 There are other issues with EToN systems and current ways of working. There are different interpretations of legislative requirements and definitions and work-arounds can add to administration costs and cause delay. Photos and other documents cannot be uploaded. Data models are fragmented and inconsistent. Collaboration and joint working is not supported. Change is impossible without updating the technical specification – the 2013 edition took 3 years to do. Any future policy changes the DfT would like to introduce would require changes to EToN.

7.7 There is a set of wider issues and Government policies that inform the policy context.

- Traffic is forecast to grow with rising levels of congestion.
- Congestion has an adverse impact on local air quality and can lead to more accidents.
- There is a growing need for more utility infrastructure e.g for new housing developments.
- There is a manifesto commitment to provide gigabit broadband to every home and business by 2025 and major Government programmes to support the roll-out of 5G. The number of telecoms works are forecast to triple over the next 3-5 years.
- The Government Digital Service has standards for digital services that need to be modern, Agile, open sourced etc. Any updated street works system needs to meet the service standard.
- There is growing demand from a range of customers for open, up-to-date data on the timing, location, actual start/stop times for live and planned works, for example to help with journey planning and to support the arrival of automated vehicles.

7.8 This Statutory Instrument amends legislation to support the implementation of Street Manager – a new digital service for planning, managing and communicating street and road works. The DfT has been working with industry on the development of this service since 2017. It is now in Beta development and roll-out stage having been developed and tested in line with the Agile project management methodology. As of

28 January 2020, around 180 of the 250 main user organisations have registered and have access to the service (which is available via a web-site for registered users).

7.9 Street Manager is a single service for planning and managing street and road works, providing a single version of the truth for users and improving consistency. It has been supported by the industry and has been developed through close working with them. We plan to publish open data on live and planned works so that the technology sector can take this to provide a range of products for the public. Street Manager will deliver many benefits (see associated Impact Assessment[1] for further details). The DfT has a commitment to continuous improvement to ensure that Street Manager will continue to meet user needs.

7.10 The DfT consulted between May and September 2019 on various legislative amendments to support implementation of Street Manager and other minor amendments to improve the operation of street and road works.

- A date for when the amendments come into force. In practice, this will be the end date for when local authorities and utility companies need to complete their transition to Street Manager and the existing EToN Technical Specification will be withdrawn in England. We proposed a date of 31 March 2020. 95% of responses supported this date. After this date, users need to submit data to Street Manager either via the user interface (the web-site) or an Advanced Programming Interface (API) for other works management systems which allow data to be exchanged with Street Manager.
- Proposals to ensure that all local authorities and utility companies contribute to the ongoing costs of maintaining Street Manager and for continuous improvement to the service. The DfT has paid over £10 million for the development of Street Manager. This proposal was supported by approximately 70% of respondents. Information on charges can be found in the Impact Assessment.
- Amending the current deadline in legislation for the submission of works start and stop notices from the current deadline of the end of the next working day after works stop/start to two hours after works stop/start. These modifications would support more real-time updates of works start and stop data.
- Other amendments include: removing references to EToN in the regulations and, instead, requiring the use of Street Manager for certain communications under the noticing and permitting systems; amending the definition of major works to encourage utility companies to put their forward plans on Street Manager and to ensure correct classification of works; amending the timeframes relating to road restrictions that authorities can put in place following resurfacing works or when new roads are built; and removing the requirement for fixed penalty notices to be in PDF format and/or sent by post.

7.11 As part of the development of Street Manager, the DfT carried out user research in 2017 that considered a range of options for meeting user needs and addressing frustrations, costs and issues with the existing EToN system. This included using different technological solutions and moving away from use of a single system. The research supported the need to continue using a single system, providing one version of the truth, that all users could access via modern technology and that was continued to be mandated via regulations.

[1] https://www.gov.uk/government/consultations/street-manager-and-street-works-permit-scheme-changes

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union / trigger the statement requirements under the European Union (Withdrawal) Act 2018.

9. Consolidation

9.1 There are no plans to consolidate the relevant legislation.

10. Consultation outcome

10.1 The DfT consulted on these measures between May and September 2019. https://www.gov.uk/government/consultations/street-manager-and-street-works-permit-scheme-changes

10.2 92 responses to the consultation were received, supporting the almost all the proposals. The only one that was not supported was the new permit scheme condition that proposed a presumption in favour of locating new equipment in footways rather than the carriageway. The DfT has therefore withdrawn this proposal.

10.3 The consultation summary and Government response can be found here: https://www.gov.uk/government/consultations/street-manager-and-street-works-permit-scheme-changes

11. Guidance

11.1 A range of user guidance and training is being provided to organisations transitioning to Street Manager. It can be found here https://departmentfortransport.github.io/street-manager-docs/

12. Impact

12.1 The impact on business and highway authorities (public sector) is set out in the Impact Assessment[2].

12.2 There is no significant impact on business, charities or voluntary bodies.

12.3 A full Impact Assessment is submitted with this memorandum and published alongside the Explanatory Memorandum on the legislation.gov.uk website.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. Further information can be found in the Impact Assessment.

14. Monitoring & review

14.1 The Minister has confirmed that a review provision is not appropriate for these regulations as the benefits of the amendments clearly outweigh any potential adverse effects. The Impact Assessment clearly sets out these benefits.

14.2 The approach to monitoring of this legislation is via a Post Implementation Review which will be carried out in 2023.

[2] https://www.gov.uk/government/consultations/street-manager-and-street-works-permit-scheme-changes

14.3 Once Street Manager is in full use, the DfT will have a wealth of data to help monitor and evidence the success of the service. This will also inform ongoing support and development of Street Manager and its future strategic direction.

15. Contact

15.1 Sally Kendall at the Department for Transport, Telephone: 07826 902195 or email: sally.kendall@dft.gov.uk can be contacted with any queries regarding the instrument.

15.2 Anthony Ferguson, Deputy Director for Traffic and Technology, at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.

15.3 Baroness Vere of Norbiton at the Department for Transport can confirm that this Explanatory Memorandum meets the required standard.