EXPLANATORY MEMORANDUM TO

THE STREET AND ROAD WORKS (MISCELLANEOUS AMENDMENTS) (ENGLAND) REGULATIONS 2022

2022 No. 831

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 utility street and highway authority road works to provide more up to date information to road users and to improve efficiency and communications between highway authorities and utility companies. It:

- makes it mandatory to use the DfT's 'street manager' digital service for planning and managing works for notifying and registering restrictions issued under sections 58 (restriction on works following substantial road works) and 58A (restriction on works following substantial street works) of the New Roads and Street Works Act 1991 (c. 22) ("the 1991 Act");
- provides some exemptions from these restrictions in permit scheme areas;
- requires works start and stop notices to be submitted at weekends, and by highway authorities;
- amends the list of reasons highway authorities can use to designate roads as traffic sensitive;
- requires information on ancillary activities to the works known about at the time to be submitted with the permit application;
- further amends the definition of major works; and
- requires highway authorities to notify a utility company that their works are overrunning and an overrun charge is being applied.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

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 highway authority to maintain the roads or, for example, to install cycle or bus lanes. Highway authorities own and manage the local road network. National Highways owns and manages the strategic road network. Transport for London manages the strategic road network in Greater London.

6.2 The main legislation relating to street works is Part 3 of 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 National Highways or Transport for London when they want to work on the strategic road network.

6.3 Part 3 of the Traffic Management Act 2004 (c. 18) ("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 highway 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 by minimising disruption to road users. 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 (S.I. 2007/1951) ("the 2007 Noticing Regulations"); the Street Works (Charges for Unreasonably Prolonged Occupation of the Highway) (England) Regulations 2009 (S.I. 2009/303) ("the 2009 Charging Regulations") (both made under the 1991 Act); and the Traffic Management Permit Scheme (England) Regulations 2007 (S.I. 2007/3372) ("the 2007 Permit Regulations") (made under the 2004 Act).

6.4 The permitting system under the 2004 Act and the 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. All but four highway authorities now operate permit schemes as these are a much more effective way of managing street and road works and reducing their impact on congestion, but these authorities are also expected to introduce permit schemes at some point in the near future.

6.5 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.

7. Policy background

What is being done and why?

7.1 Approximately 2.5 million street and road works are carried out in England each year. Works can cause significant disruption to people's journeys and congestion which has an economic cost. 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.

7.2 The Government has worked with the sector in recent years to implement a range of measures to help ensure that works are planned, managed and co-ordinated as effectively as they can be, to improve consistency and communication across the sector, and to make accurate and up-to-date information available to road users. The Department's work is focused on ensuring that the most modern and effective methods possible are being used by highway authorities, utility companies and their contractors to plan and manage works. This is not just to minimise the impact that works have on congestion, but, in addition, to ensure that systems are fit for the challenges of the future, including the digital transport agenda, that they support innovation and that they are able to deal with the rising demands for transport services and for utility infrastructure.

7.3 Recent Government initiatives have included:

- The introduction of the DfT's street manager digital service which, since July 2020, is being used by every utility company, highway authority and their contractors in England to plan and manage road works. Real time data on live and planned works is also now being streamed here: https://www.gov.uk/guidance/find-and-use-roadworks-data
- The introduction of an updated Specification for the Reinstatement of Openings in the Highway[1] (SROH version 4) – the first for 10 years – which came into force as statutory guidance on 10th May 2021. This sets out the technical standards for utility reinstatements following works.
- The amendment of regulations in July 2020 by the Street and Road Works (Amendments Relating to Electronic Communications) (England) Regulations 2020 (S.I. 2020/122) ("the 2020 Regulations")) to support the introduction of street manager and requiring, for instance, notices to be sent within two hours of works starting or stopping on week days, amending the timelines associated with road restrictions issued under section 58 (restriction on works following substantial road works) of the 1991 Act, and amending the definition of "major works" in the 2007 Noticing Regulations and the 2009 Charging Regulations.

7.4 The Government consulted in 2021 on additional reforms to regulations covering street and road works[2]. They came to light during the development and introduction of street manager and the update to the Coordination Code of Practice[3]. They were also aimed at supporting the Government's Manifesto commitment to roll out full fibre and gigabit-capable broadband to every home and business across the UK by 2025. Works by telecoms companies currently account for one third of all works, and this number is estimated to triple over the next few years as a result of broadband roll-out and installing and upgrading networks.

7.5 The main proposals presented in the consultation, and which are included in this instrument are:

[1] https://www.gov.uk/government/publications/specification-for-the-reinstatement-of-openings-in-highways
[2] https://www.gov.uk/government/consultations/street-manager-and-permit-scheme-changes
[3] https://www.jaguk.org/documents/code-of-practice-for-the-co-ordination-of-street-works-and-works-for-road-purposes-and-related-matters-haucengland-edition

- Including notifications about section 58 and section 58A/Schedule 3A of the 1991 Act road restrictions in street manager to improve communication between utility companies and highway authorities about proposed restrictions and then when they are in force. They are currently sent via email.
- Allowing exemptions for some works from section 58 and 58A restrictions in permit scheme areas. Exemptions were provided in the 2007 Noticing Regulations but needed to be included in the 2007 Permit Regulations since almost every highway authority now operates a permit scheme.
- Requiring works start and stop notices to be sent within two hours at weekends; and requiring highway authorities to submit start and stop notices for their works so that up to date information can be provided via street manager to road users. In 2020, the deadline for submitting works start and stop notices by utility companies on weekdays was amended from the previous deadline of 4.30pm the following working day by regulation 6(3) of the 2020 Regulations. The proposal was to further amend the requirement so that more up-to-date information will be provided to road users at weekends and for highway authority works.
- Amending the list of reasons highway authorities can use to designate roads as traffic sensitive. The list included some categories such as a road that was part of a winter maintenance route and needed to be updated to more accurately reflect traffic sensitivity and remove unnecessary restrictions on works.
- Requiring utility companies and highway authorities to submit supplementary information about ancillary activities, such as the placement of traffic light heads on adjacent roads, that are known about at the time with the permit application. Any supplementary information that becomes known after the permit has been granted would need to be submitted in line with a new national permit condition. This will help highway authorities to manage traffic around the works' site and to coordinate other activities.
- An additional amendment to the definition of major works in the 2007 Noticing Regulations and the 2009 Charging Regulations. A change was made in 2020 by regulations 3(2) and 6(2) of the 2020 Regulations to remove the part of the definition which referred to works "which have been identified in the annual operating programme of an undertaker". However, it became clear that another part of the definition, referring to "works which would normally be planned or known about at least six months in advance of the date proposed for the works", also needed to be removed to prevent works being incorrectly classified as major works. Major works permit applications have to be submitted three months in advance and there is a higher permit fee. Removing this element of the definition will ensure that works are only classified as major if they have a duration of more than 10 days or require an associated traffic regulation order issued under section 14 (temporary prohibition or restriction on roads) of the Road Traffic Regulation Act 1984 (c. 27).
- Requiring highway authorities to notify a utility company via a "works overrunning notice" that an overrun charge under section 74 (charge for occupation of the highway where works unreasonably prolonged) of the 1991 Act is being applied. This will alert utility companies that a charge, which can be up to £10,000 per day, has started to be levied.
- Amendments that can be delivered through changes to statutory guidance:

- Allowing phases within a permit so that up-to-date information on traffic management can be sent to street manager and then published. This change can be delivered via an amendment to the national conditions for permit schemes[4].
- Clarifying in the permit scheme statutory guidance[5] how the 'reasonable period' should be calculated. This is a period of time permitted before an overrun charge is applied.

7.6 The Government consulted, in addition, on three changes relating to street works inspections: amending the way an inspection unit is calculated; using performance to calculate the number of sample inspections carried out each year so that poor performers are inspected more frequently; and consolidation of the fee that needs to be paid for re-inspections of reinstatements that have failed a previous inspection. The first two of these amendments are being delivered by another statutory instrument – the Street Works (Inspection Fees) (England) Regulations 2022 and updated statutory guidance will address the consolidation of the fees for follow-up inspections of reinstatements.

7.7 Finally, the Government consulted on introducing a new type of flexi permit that would cover a number of standard and minor works in a certain area for a period of time. This was not, however, supported by responses from highway authorities to the consultation and so is not being taken forward at this time.

8. European Union Withdrawal and Future Relationship

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

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 July 2021: https://www.gov.uk/government/consultations/street-manager-and-permit-scheme-changes.

10.2 118 responses to the consultation were received from highway authorities, utility companies, and a small number of representative groups and third-party suppliers. Almost all the proposals were supported. The only one that was not supported was in relation to flexi permits and this proposal is not being taken forward at this time.

10.3 See paragraphs 7.5-7.7 above for a summary of the consultation outcome. Full details and the Government's response can be found here: https://www.gov.uk/government/consultations/street-manager-and-permit-scheme-changes

[4] https://www.gov.uk/government/publications/street-works-permit-schemes-conditions
[5] https://www.gov.uk/government/publications/street-works-the-2007-permit-scheme-regulations-as-amended-in-2015

11. Guidance

11.1 The permit scheme statutory guidance and national conditions have been updated and are available here:

https://www.gov.uk/government/publications/street-works-the-2007-permit-scheme-regulations-as-amended-in-2015

https://www.gov.uk/government/publications/street-works-permit-schemes-conditions

11.2 The coordination code of practice will need updating before the amendments included in this instrument come into force. This will be updated, consulted on as other amendments are being made, and published before the instrument comes into force in April 2023.

https://www.gov.uk/government/publications/street-works-co-ordination

12. Impact

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

12.2 There is no, or no significant, impact on the public sector.

12.3 A full Impact Assessment has not been prepared for this instrument because of the low level of impact.

12.4 An Impact Assessment was prepared to accompany the consultation. Following responses, the Government has decided not to proceed with one of the proposals relating to flexi permits. Removing this measure has meant the impact of the proposals which are being implemented falls below the threshold required for an Impact Assessment to be prepared.

13. Regulating small business

13.1 The legislation applies to activities that are undertaken by small businesses. However, the impact is low and below the threshold for which an Impact Assessment needs to be prepared.

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 outweigh any potential adverse effects.

14.2 The approach to monitoring of this legislation is via a Post Implementation Review which will be carried out in 2025.

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.