EXPLANATORY MEMORANDUM TO:

THE TRAFFIC MANAGEMENT PERMIT SCHEME (ENGLAND) (AMENDMENT) REGULATIONS 2015

No. 958

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

2. Purpose of the instrument

2.1 These Regulations firstly, make consequential amendments to the Traffic Management Permit Scheme (England) Regulations 2007 ("the 2007 Regulations") following amendments to Part 3 of the Traffic Management Act 2004 ("the 2004 Act") by the Deregulation Act 2015 ("the 2015 Act"), which received Royal Assent on 26th March 2015. The 2015 Act removes the requirement for the Secretary of State to approve and give effect to permit schemes.

2.2 As a result of the Infrastructure Act 2015 coming into force, the 2015 Act inserts into the 2004 Act the concept of a strategic highways company as a body which can prepare and commence a permit scheme. These Regulations also make other amendments to the 2007 Regulations in order to enable Permit Schemes to operate effectively in the future when they are developed and brought into operation under a highway authority's own powers. These Regulations also contain transitional provisions for ensuring that current permit schemes are brought into compliance with the amended Regulations by 1st October 2015.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 The Deregulation Act 2015 has amended Part 3 of the 2004 Traffic Management Act as it relates to the means of giving approval to Highway Authority street works permit schemes in England. Section 37 of the 2004 Act provides that the Secretary of State may make provision in regulations for the content, preparation, operation, variation or revocation of permit schemes. These Regulations, which are made under section 37 of the 2004 Act, amend the 2007 Regulations, which were amended by the 2015 Act.

5. Territorial Extent and Application

5.1 This instrument applies to England.

5.2 Changes introduced by the Deregulation Act 2015 and the Infrastructure Act 2015 to the 2004 Act do not have effect in Wales.

6. European Convention on Human Rights

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

7. Policy background

- What is being done and why

7.1 Part 3 of the 2004 Act provides the ability for highway authorities (including now a strategic highways company) to develop and then commence the operation of a permit scheme. Highway authorities do not have to introduce permit schemes, but schemes provide greater control over how works are undertaken in the highway - both street works (carried out by utility companies) and road works (carried out by the local highway authority). Permit schemes enable the authorities to promote better working practices, for example, working outside peak hours where appropriate, as well as improved coordination of works, so minimising inconvenience and disruption to all road users and communities.

7.2 In January 2013, following a stakeholder consultation in 2012, the Government announced its decision to remove the requirement for the Secretary of State to approve highway authority permit schemes. The 2015 Act delivered this change. Work has been undertaken with the sector on implementing the change in the approval process. However, the Department considered that in addition to consequential changes, to support more nationally consistent future permit schemes, specific changes were needed to the 2007 Regulations.

7.3 Sixty six permit schemes were in operation by March 2014. Utility companies raised concerns that highway authorities were adopting a wide range of different scheme 'conditions', potentially adding cost, confusion and complexity for utility companies working across a number of authority areas. Therefore the Department asked the sector to develop and agree a set of 'national conditions'. From March 2014, authorities submitting permit schemes to the Secretary of State incorporated the conditions into their schemes. At the same time, they also included a discount for works completed outside of 'traffic-sensitive' times.

7.4 Authorities did not experience any difficulties with incorporating the revised requirements into their schemes. Therefore, the Department considers the imposition of a standard set of conditions and the specific discount to be

particularly important proposals now included in the instrument. This forms one of a number of changes that were determined should be made.

7.5 In order to ensure the effectiveness of future schemes, given the removal of the oversight of the Secretary of State, the Department has consulted fully on a number of amendments to the 2007 Regulations.

8. Consultation outcome

8.1 The Government held a public consultation on the additional proposals to amend the 2007 Regulations. The consultation took place between 12th August and 25th September 2014. A further short consultation was held from 9th February to 9th March 2015, seeking views on the proposal to extend the provisions in the amended regulations to all schemes from 1st October 2015.

8.2 Both consultations were open to the public, but were principally of interest to highway authority and utility practitioners. All apart from 2 of the 79 responses to the first consultation were from sector stakeholders. Highway Authorities are represented nationally by the Joint Authorities Group (JAG) and Utility Companies by the National Joint Utilities Group (NJUG). JAG and NJUG provided a response representing the views of their members, whilst many individual responses replicated those responses. The response to the consultation was published on 9 February 2015 at:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/402247/permit-regulations-consultation-response.pdf

8.3 The main proposals consulted on were:

- Strengthening requirements for both timing and content of permit scheme evaluations. The Department received over 60 responses, with 12 largely supportive of change. The majority were concerned that only evaluating schemes every three years would not hold schemes to account. The Department decided in response that an annual evaluation should be conducted for the first three years of operation.

- Ensuring that all permit schemes use a standard set of conditions when imposing a condition in a permit. This proposal is aimed at reducing inconsistencies in scheme conditions. There were 70 responses of which 58 were supportive with 12 against. Those against were generally concerned that it weakened local determination. Authorities' main concern was how the change would affect new authorities joining 'joint' or 'common' permit schemes The Department is confident that the application of standard conditions will improve consistency.

- Proposal to require discounts for street works carried out on traffic-sensitive streets, but outside of traffic-sensitive times. There was a general consensus on the principal of such discounts. This was supported by NJUG and was not opposed in principle by JAG, although they were

concerned about the effect it might have on the cost benefit of existing schemes. The Department's response is that there should be no impact on the financial viability of a scheme.

8.4 Additional Consultation - Following the above consultation and in light of the views sought, the Department decided to seek further views on the proposal for all schemes to comply with the amended regulations not just future schemes. The consultation took place between 9th February and 9th March 2015. It invited responses on the proposal that all existing permit schemes should adopt the amended regulations by 1 October 2015. The response to the consultation was published on 17th March 2015 at https://www.gov.uk/government/consultations/consultation-on-permit-schemes-for-street-works.

8.5 There were 53 responses to that consultation made up of 35 responses from utilities, contractors and their representative bodies and 18 from authorities and their representative bodies - there were no responses from members of the public. No significant issues were raised by utilities who all supported the change. Authorities' main concerns centred on the timescales for the change and weakened local determination.

8.6 The Department's response to the points made were that:

- Requirements for existing schemes would be made clear in the regulations as part of the transitional arrangements;
- that local determination will not be weakened as schemes can still be developed and varied from time to time to reflect local needs; and
- That authorities will not be required to undertake stakeholder consultation on the legislative changes.

8.7 Having considered the issues raised by authorities the Department has decided to introduce the change as stated.

9. Guidance

9.1 Guidance has been updated to reflect the changes made by this Regulation. In March 2015 the Secretary of State published Statutory Guidance on permit scheme conditions, which can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/413643/statutory-guidance.pdf. Following proposed engagement with industry stakeholders Guidance will be further updated in due course.

10. Impact

10.1 There is no additional impact on business, charities or voluntary bodies. The public sector, in the form of highways authorities will benefit in that permit schemes can help reduce congestion, and can therefore reduce the delays to journey times by reducing the occupation of the highway. Utility companies will benefit from greater consistency in the operation of permit schemes that the changes will bring. There is no change in the costs of operating permit schemes.

10.2 A preliminary Impact Assessment for the instrument was prepared and included in the consultation document. This was updated following the consultation, but there was no change to the overall costs in the original impact assessment. There remains no adverse impact on business, charities or voluntary bodies.

11. Regulating small business

11.1 The legislation applies to statutory undertakers and their contractors only.

11.2 The changes to the regulations help to minimise the impact of the requirements on firms employing up to 20 people, by the standardising of some aspects of the requirements for permits. It is expected that the proposed measures will not impose any new or increased burden upon small businesses.

12. Monitoring & review

12.1 The regulations require highway authorities to evaluate their schemes every year for the first three years and every three years thereafter – they are also required to provide that evaluation to stakeholders described in regulations.

13. Contact

13.1 If you have any queries regarding the Regulations please contact **Ann Morley** at the Department for Transport :(0)020 7944 2298 or e-mail: permit schemes@dft.gsi.gov.uk