
Decision Maker: Environment Portfolio Holder

**FOR PRE-DECISION SCRUTINY BY ENVIRONMENT POLICY
DEVELOPMENT AND SCRUTINY COMMITTEE ON 7TH JULY
2015**

Date: Tuesday 7 July 2015

Decision Type: Non-Urgent Non-Executive Non-Key

Title: LONDON PERMIT SCHEME FOR ROAD AND STREET WORKS

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Chief Officer: Nigel Davies, Executive Director of Environment & Community Services

Ward: All

1. Reason for report

This report provides an update on implications of changes to the London Permit Scheme for road and street works made necessary by changes in legislation.

2. **RECOMMENDATION(S)**

- (i) That the Portfolio Holder approves the proposed changes to the London Permit Scheme.

Corporate Policy

1. Policy Status: Existing Policy: London Borough of Bromley have responsibilities under the New Roads and Street works Act 1991 and Traffic Management Act 2004 to monitor street works undertaken by Statutory Undertakers within the Borough.
 2. BBB Priority: Excellent Council Quality Environment Safer Bromley Vibrant, Thriving Town Centres:
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Financial

1. Cost of proposal: Net nil, as estimated loss of income will be offset by a reduction in expenditure
 2. Ongoing costs: Net nil
 3. Budget head/performance centre: London Permit Scheme
 4. Total current budget for this head: Net nil budget as income covers costs
 5. Source of funding: Existing revenue budget 2015/16
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Staff

1. Number of staff (current and additional): 7.5 fte additional
 2. If from existing staff resources, number of staff hours: 1 fte
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Legal

1. Legal Requirement: Statutory Requirement: New Roads and Street Works Act 1991 & Traffic Management Act 2004.
 2. Call-in: Applicable
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Customer Impact

1. Estimated number of users/beneficiaries (current and projected): Borough wide impact on residents, businesses and visitors
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Ward Councillor Views

1. Have Ward Councillors been asked for comments? No Not Applicable
2. Summary of Ward Councillors comments:

3. COMMENTARY

Background

- 3.1 Highway Authorities have a duty to co-ordinate all works on the highway under the New Roads & Street works Act 1991 (NRSWA). The Traffic Management Act 2004 (TMA) placed a Network Management Duty on all Highway Authorities in England, and under Part 3 of the Act, highway authorities could apply to the Secretary of State to operate a Permit Scheme to manage all road and street works.

The London Permit Scheme

- 3.2 In April 2010 LB Bromley joined the London Permit Scheme (LoPS), which is a “Common” scheme under the TMA, where a number of authorities in London have developed a common approach with a single set of “rules”. Each London Borough and Transport for London operate the scheme independently for their own road network, subject to normal cross boundary liaison and co-operation.
- 3.3 Until now, permit schemes were brought into operation after receiving the approval of the Secretary of State, with each individual highway authority being provided with a Statutory Instrument for their scheme, even where they were members of a common scheme. Only the Secretary of State could make a ‘Statutory Instrument’ and the changes to the Traffic Management Act provide for a new approval process.
- 3.4 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 amends the Traffic Management Act 2004 to enable authorities to approve their own schemes and to vary or revoke existing schemes.
- 3.5 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”).
- 3.6 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.
- 3.7 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 essential that this arrangement continues
- 3.8 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. If the London authorities do 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 London's ability to control works across London and manage the network.

3.9 The LoPS members have discussed the impact of the amended regulations and it is considered that the following steps need to be undertaken to ensure LoPS continues to operate within the amended regulations:

- LoPS members to undertake a full review of the amended regulations to identify areas of conflict with LoPS by mid May 2015
- LoPS members to agree the required amendments to ensure LoPS complies with the amended regulations by end of June 2015
- Draft and agree the amended LoPS document by early August 2015
- Each authority needs to agree an authorised person within their organisation to bring that order into effect.
- Draft and sign off the relevant order by mid-August
- Amend and re-issue LoPS documentation by order by the 1st Sept 2015 which will allow for the 4 weeks notice period under the Amendment Regulations

3.10 There is no requirement that the LoPS members consult on the changes to the scheme to bring it into line with the amended regulations.

Changes to LoPS to comply with the Amendment Regulations

3.11 The following are the main areas which have been identified where changes are required to LoPS to ensure that it conforms to the Amendment Regulations and the current published statutory guidance:

- Amend LoPS to account for the National Permit Conditions as set out in statutory guidance
- Amend the charges section to account for permit charge discount for works undertaken on traffic sensitive streets at non-traffic sensitive times on lower reinstatement category roads
- Amend the reporting and evaluation section to align with the new statutory requirement In the Amendment Regulations
- Undertake a review of the whole of LoPS to remove references which are non-compliant with the Amendment Regulations e.g. reference to the Secretary of State bringing the current version of LoPS into effect.

3.12 As a result of these changes the LB Bromley scheme may encounter a 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. Bromley's current scheme already makes a provision for this discounted rate. In all likelihood the discounted rates will only apply to minor activities. On the assumption that there is a significant increase in utility companies managing their works in such a way that would entitle them to the discounted rate LB Bromley may have a reduction in minor permit application fees of around £7k. 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

Proposals

3.13 As a consequence of these changes LB Bromley will need to reapply for scheme approval to the appropriate person within its organisation, which it has been suggested will be the Chief

Executive or other appropriate officer who holds the necessary delegated authority. As a Permit Authority, LB Bromley will need to inform stakeholders of all the amendments made to the scheme to meet the regulation amendments, by providing an 'Order' setting out the necessary changes.

4. POLICY IMPLICATIONS

- 4.1 The Council's vision for Bromley is that it remains a place where people choose to live and do business. A safe and well maintained highway network has an important part to play in realising this vision particularly in terms of improving public perception of the street scene and promoting the accessibility of public transport. These align well with the policy priorities in Building a Better a Bromley.

5. FINANCIAL IMPLICATIONS

- 5.1 Under the permit regulations a fee is chargeable for each permit issued to a Statutory Undertaker (SU) for works on the public highway. The level of fees for each road and work type was approved by the Secretary of State as part of the LoPS, and although a common scheme each London Borough has determined their own fee structure. A maximum fee level for each type of permit has been set by Government.
- 5.2 The fees charged can only cover the reasonable costs incurred by an authority in administering a permit scheme, over and above the existing costs involved in co-ordinating works, and is not intended to generate revenue for highway authorities. In addition to direct staff costs, guidance provided by the Secretary of State in the Draft Code of Practice for Permits indicate that allowable costs can also include;
- (i) non-salary related costs such as pensions and benefits;
 - (ii) appropriate allocation of accommodation cost;
 - (iii) appropriate allocation of central services costs;
 - (iv) appropriate share of IT costs (hardware and software);
 - (v) general administration and management
 - (vi) monitoring the permit system and production of KPI's;
 - (vii) invoicing
- 5.3 During 2014/15 the total income from LoPS was £793k. The changes in legislation may reduce the level of income received by approximately £7k. This can be offset by a corresponding reduction in London Permit scheme expenditure.

6. LEGAL IMPLICATIONS

- 6.1 The New Road & Street Works Act 1991 and Traffic Management Act 2004 empower the Council as Highway Authority to co-ordinate and monitor the works of statutory Undertakers on the public Highway

7. PERSONNEL IMPLICATIONS

- 7.1 The costs incurred in administering the LoPS for SU works can be recovered from the permit fee, and there are no proposed changes to how the scheme is administered.

Non-Applicable Sections:	none
Background Documents: (Access via Contact Officer)	Traffic Management Act 2004 Department of Transport – Draft Code of Practice for Permits – July 2007

	<p>Department of Transport – Draft Statutory Guidance for Permits – July 2007</p> <p>London Permit Scheme Working Group – Draft London Permit Scheme – January 2008</p>
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