

Report to:	Cabinet	Date of Meeting:	3 July 2015
Subject:	The Sefton Council Permit Scheme	Wards Affected:	(All Wards);
Report of:	Director of Built Environment		
Is this a Key Decision?	No	Is it included in the Forward Plan?	No – Rule 27 Approval
Exempt/Confidential	No		

Purpose/Summary

To seek authorisation for officers to make an order as required by Government to confirm that the Sefton Council Permit Scheme is fully compliant with the revised statutory regulations and guidance

Recommendation(s)

1. That Cabinet gives authorisation to the Head of Service (Regulation & Compliance) to make an order to the effect that the Sefton Council Permit Scheme is compliant with the Government's revised statutory regulations and guidance;
2. That authority be delegated to the Head of Service (Regeneration & Housing) to make any further necessary revisions to the scheme and report to Cabinet member as appropriate; and
3. It be noted that the proposal was a Key Decision but had not been included in the Council's Forward Plan of Key Decisions. Consequently, the Leader of the Council and the Chair of the Overview and Scrutiny Committee (Regeneration and Skills) had been consulted under Rule 27 of the Access to Information Procedure Rules of the Constitution, to the decision being made by the Cabinet as a matter of urgency on the basis that it was impracticable to defer the decision until the commencement of the next Forward Plan because the Council is required to make an order confirming that the Sefton Council Permit Scheme complies with revised statutory guidance (not yet published) no later than 1st September 2015

How does the decision contribute to the Council's Corporate Objectives?

<u>Corporate Objective</u>		<u>Positive Impact</u>	<u>Neutral Impact</u>	<u>Negative Impact</u>
1	Creating a Learning Community		✓	
2	Jobs and Prosperity	✓		

3	Environmental Sustainability	✓		
4	Health and Well-Being	✓		
5	Children and Young People	✓		
6	Creating Safe Communities	✓		
7	Creating Inclusive Communities	✓		
8	Improving the Quality of Council Services and Strengthening Local Democracy	✓		

Reasons for the Recommendation:

The Government requires that each authority operating a permit scheme ‘makes an order’ to confirm their scheme complies with revised statutory guidance.

Alternative Options Considered and Rejected:

There is no alternative. The permit scheme would become illegal should the Council not proceed with the order

What will it cost and how will it be financed?

(A) Revenue Costs

Nil

(B) Capital Costs

Nil

Implications:

The following implications of this proposal have been considered and where there are specific implications, these are set out below:

Financial	
None	
Legal	
Part 3 of the Traffic Management Act 2004 and the Traffic Management Permit Scheme (England) Regulations 2007 gives local authorities powers to design and operate a permit scheme to improve the management of works in the street undertaken by both highway authorities and utilities companies. The revised Government statutory guidance requires the making of an order for any Council operating a permit scheme	
Human Resources	
None	
Equality	
1. No Equality Implication	<input checked="" type="checkbox"/>
2. Equality Implications identified and mitigated	<input type="checkbox"/>
3. Equality Implication identified and risk remains	<input type="checkbox"/>

Impact of the Proposals on Service Delivery:

Making the order will allow the Council to continue to operate the permit scheme to control works on the highway network

What consultations have taken place on the proposals and when?

In accordance with Department of Transport requirements, there is no requirement to consult

The Head of Corporate Finance and ICT has been consulted and notes the report indicates there are no direct financial implications for the Council. The Permit Scheme allows for all costs over and above those currently incurred (in relation to statutory undertakers by operating the noticing scheme), to be recovered through permit fees. (FD 3615)

The Head of Corporate Legal Services has been consulted and any comments have been incorporated into the report. (LD 2907/15)

Implementation Date for the Decision

Immediately following Cabinet decision to allow for the order to be made before 1st September 2015 deadline

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Background Papers:

There are no background papers available for inspection

1. Introduction/Background

- 1.1 All highways authorities have a duty under the New Roads and Street Works Act 1991(NRSWA) and the Traffic Management Act 2004 (TMA) to effectively coordinate all activities on the highway to ensure the safe and expeditious movement of traffic, pedestrians and vulnerable road users.
- 1.2 Part 3 of the Traffic Management Act 2004 and the Traffic Management Permit Scheme (England) Regulations 2007 gives local authorities powers to design and operate a permit scheme to improve the management of works in the street undertaken by both highway authorities and utilities companies.
- 1.3 This Permit Scheme was originally considered by Cabinet at its meeting on 11 September 2014. Thereafter, Sefton Council became a Permit Authority on 2nd February 2015 following an application to the Secretary of State. The Secretary of State proceeded to make a statutory instrument on 18 November 2014, The Traffic Management (Sefton Metropolitan Borough Council) Permit Scheme Order 2014/3107. The Order took effect on 2 February 2015. The Secretary of State now wishes to empower local authorities to make their own orders and remove the need for the Secretary of State to be involved. Hence some revisions are required and reassurance is required to ensure that the Council's existing Order is compliant with the legislation.

2.0 Revisions To Permit Scheme Legislation

- 2.1 The Department for Transport is due to publish statutory guidance in the operation of a permit scheme. This will affect all schemes, including those already operating. These revisions have been brought about by the desire of the Government to remove the Secretary of State from the approvals process, although he will remain a statutory consultee. The 2015 Deregulation Act amended the Traffic Management Act by changing the method whereby highway authority permit schemes in England are brought into operation. This will enable highway authorities in England to bring forward schemes under their own powers.
- 2.2 All authorities who choose to introduce a permit scheme will be required to comply with the 2007 permit scheme regulations (The Traffic Management Permit Scheme (England) Regulations 2007), as amended by the 2015 amendment regulations (S.I 958).
- 2.3 All authorities operating an existing permit scheme will comply with the 2007 Permit Scheme regulations, as amended by the 2015 amendment regulations, on or by 1 October 2015. This clause applies to Sefton Council
- 2.4 Not only must all permit schemes comply with all the revised requirements, they will also be required to have regard to Statutory Guidance (made under section 33 (5) of the TMA) for the development of highway authority permit schemes.

3.0 New Requirements

3.1 The Sefton Council Permit Scheme falls into the following category as stated by DfT:

Schemes assessed by the Department for Transport after 13 March 2013 (22 schemes already using national conditions and providing the TSS discount) will need to:

- Undertake operational work required to provide confirmation that there is full compliance with the 2015 regulations, (see Annex A) can be used as a guide.
- Prepare the paper work needed to deliver an order signed by the chief executive or delegated officer or member (usually the person who signed the original application or their successor).
- Provide four weeks' notice (so by 1 September 2015) for stakeholders on the making of this order.

3.2 Whilst the final statutory guidance is still awaited, indications are that the requirements included in Annex A will form the basis of the statutory guidance. The Sefton Council Permit Scheme currently complies with the revised requirements and the work required in making the order will not materially affect the current scheme, it will merely confirm that the scheme complies with the revised guidance and is fit for purpose.

ANNEX A

Summary of Changes to Permit Regulations for implementation by 1 October 2015

'Reg' refers to the relevant section in the 2007 Regulations

'AM and number' refers to the 2015 amendment regulation.

No	Reg	Subject	Notes
1.	2 AM3	<p>Definition change</p> <p>"Guidance" - Permit Schemes – refers to Permit Scheme Conditions dated March 2015.</p> <p>"Permit Authority", in relation to a permit scheme, means the relevant highway authority etc. which has prepared a scheme under section 33(1) or (2) of the 2004 Act.</p>	<p>Regulation 3 amends regulation 2 inserting a revised definition of "Guidance" and "Permit Authority" (reflecting the creation of a strategic highway company under the Infrastructure Act 2015).</p>
2.	2 AM	<p>New Definitions</p> <p>"Order" means "a document signed by a person authorised by the Permit Authority to give effect to, vary or revoke a permit scheme;"</p> <p>Definition provision</p> <p>"traffic-sensitive street" means a street designated as traffic-sensitive under section 64 of the New Roads and Street Works Act 1991 (a) – footnote provided</p> <p>"traffic-sensitive time", in relation to a traffic-sensitive street, means -</p> <ul style="list-style-type: none"> • The times or dates specified in the case of limited designation; and • Any time in any other case. 	<p>Regulation 3 amends regulation 2 providing:</p> <ul style="list-style-type: none"> • a definition of "order" for the purposes of giving effect to, varying or revoking a permit scheme. • a definition of "traffic-sensitive street" and "traffic-sensitive time".

No	Reg	Subject	Notes
3.	3 AM5	Before giving effect to a scheme a Permit Authority shall consult – (g) any other persons specified in the Guidance as being persons to be consulted prior to giving effect to a permit scheme;	Regulation 5 amends regulation 3 by making a change to the consultation process to widen those who must be consulted to include any person named in the Guidance.
4.	4 AM6	<p>4. Procedural requirements for commencing permit schemes</p> <p>(1) Prior to giving effect to a permit scheme by Order in accordance with section 33A of the 2004 Act, the Permit Authority shall have considered the following -</p> <p>(e) the costs and benefits (whether or not financial) which the Permit Authority anticipates will result from that permit scheme and how such costs and benefits will be demonstrated when the permit scheme is evaluated in accordance with regulations 16A;</p> <p>(2) The Permit Authority shall confirm in the permit scheme that the scheme has been prepared in accordance with these Regulations and that it had regard to the Guidance.</p>	Regulation 6 amends regulation 4. It substitutes a new paragraph (1) and makes some changes to the factors which must be considered by a permit authority before giving effect to a permit scheme. There is also inserted a new paragraph (2) requiring that the Permit Authority confirms in their schemes its compliance with both the 2007 Regulations and the Guidance.
5.	5 AM7	<p>Varying and revoking permit schemes</p> <p>5. Before varying or revoking a permit scheme the Permit Authority shall consult the persons referred to in regulation 3(1).</p>	Regulation 7 provides full rewording for Regulation 5

6.	<p>9</p> <p>AM8</p>	<p>Permits scheme provision</p> <p>9.—(1) Subject to paragraph (2), a permit scheme shall include provision requiring a permit to be obtained by electronic communication from the Permit Authority before specified works are carried out in a specified street.</p> <p>(10) A permit scheme shall set out the ground on which a permit can be refused.</p> <p>(11) Where an application for a permit meets the relevant requirements of the permit scheme, the Permit Authority shall grant the permit.</p>	<p>Regulation 8 amends regulation 9. It provides a new title and substitutes a new paragraph (1), which requires that requests for a permit be made via electronic communication. New paragraphs (10) and (11) require that the grounds on which a permit can be refused are set out in the permit scheme and that a Permit Authority must grant a permit where the application meets the requirements for the scheme.</p>
7.	<p>10</p> <p>AM9</p>	<p>10 Conditions attached to permits</p> <p>(6) Where a condition is to be specified in a permit the Permit Authority shall use the wording and numbering for that type of condition set out in the Guidance.</p>	<p>Regulation 9 amends regulation 10. A new paragraph (6) provides that where a Permit Authority wishes to impose a condition in a scheme it must use for the relevant type of condition the numbering and wording set out in the Guidance.</p>

8.	16 AM 10	<p>Evaluation of permit schemes</p> <p>16A – (1) A permit scheme shall contain information on how the Permit Authority will evaluate that scheme.</p> <p>(2) A permit scheme shall evaluate each permit scheme following – (a) the first, second and third anniversary respectively of the date on which the permit scheme came into effect; and</p> <p>(b) every third anniversary thereafter.</p> <p>(3) In carrying out the evaluation, the Permit Authority shall include consideration of –</p> <p>(a) whether the fee structure needs to be changed in light of any surplus or deficit;</p> <p>(b) the costs and benefits (whether or not financial) of operating the scheme; and</p> <p>(c) whether the permit scheme is meeting the key performance indicators where these are set out in the Guidance.</p> <p>(4) The outcome of each evaluation shall be made available to the persons referred to in regulation 3 (1) within three months of the relevant anniversary.</p>	<p>Regulation 10 inserts a new regulation 16A. This new regulation makes provision for the content and timing of permit scheme evaluations. It provides that permit schemes are evaluated following the first, second and third anniversary of the scheme’s commencement and then following every third anniversary. It also requires that the outcome of each evaluation be made available within three months.</p>
9.	17 AM 11	<p>Notification of permit scheme (AM11)</p>	<p>Regulation 11 is largely a rewording as a consequence of other changes.</p>

10.	30 AM 12	<p>(1A) Where a Permit Authority is an Approved Authority for the purposes of the Street Works (Charges for Occupation of the Highway) (England) Regulations 2012(a), a fee may not be charged in relation to a permit for works on a street for which a charge falls due under those Regulations.</p> <p>(3A) A permit scheme shall include discounts for works which take place on streets subject to designation as traffic-sensitive, where the works take place wholly outside traffic-sensitive times.</p> <p>(7) Where a permit is granted but subsequently revoked by the Permit Authority before commencement of the specified works, the Permit Authority shall refund in full any fee charged in accordance with this regulation, provided the revocation is not the fault of the permit holder.</p>	<p>Regulation 12 amends regulation 30, and inserts new paragraphs (1A), (3A) and (7). Paragraph (1A) prevents a permit fee being charged in circumstances where a fee would fall due under the Street Works (Charges for Occupation of the Highway) England Regulations 2012 (lane rental).</p> <p>Paragraph (3A) requires discounts to be offered for works in traffic-sensitive streets where those works take place wholly outside traffic-sensitive times.</p> <p>New paragraph (7) requires that where a permit is granted but then revoked by the Permit Authority before the works have commenced and that revocation is not the fault of the permit holder, any fee paid should be refunded.</p>
11.	35 AM13	In regulation 35, for 34 (4) substitute 33A(2)	Regulation 13 makes a consequential amendment.
12.	14 AM14	<p>Transitional Provision</p> <p>14. (1) Subject to paragraph (2), Permit Authorities operating permit schemes in effect on the day on which these Regulations come into force must ensure that, by 1st October 2015, those schemes comply with the Traffic Management Permit Schemes (England) Regulations 2007, as amended by these Regulations.</p>	<p>Regulation 14 is new and is in two parts.</p> <p>Part (1) requires that by 1st October 2015 Permit Authorities must ensure that existing permit schemes are compliant with the 2007 Regulations, as amended by these Regulations.</p>
13.	AM14	<p>Transitional Provision – AM14</p> <p>(2) The requirement set out in paragraph (1) does not apply in relation to consultation or other procedural provisions with which a Permit Authority must comply before a permit scheme comes into effect.</p>	<p>Regulation 14 is new and is in two parts.</p> <p>Part (2) clarifies that an authority with an existing scheme does not have to consult just to make the changes needed to comply with the amended regulations.</p>