

EXECUTIVE NOTE

The Local Authorities' Traffic Orders (Procedure) (Scotland) Amendment Regulations 2008 SSI 2008/3

1. The above statutory instrument was made in exercise of powers conferred by section 124 of, and Part III of Schedule 9 to, the Road Traffic Regulation Act 1984. The instrument is subject to negative resolution procedure.

Background and Policy Objective

2. The existing regulations give the option for a local authority to hold a hearing for any Traffic Regulation Orders (TROs) they promote. However, in certain circumstances such as the prohibition of loading or unloading of vehicles at all times or requiring vehicles to travel in a particular direction, the holding of a hearing is currently mandatory. This process can add approximately a year to the order making process. Where a large number of objections are received, this period can be substantially longer.

3. The policy objective of the amendment is, therefore, to allow a Council discretion to dispense with a public hearing in circumstances where a project has previously been subject to full Parliamentary scrutiny and subsequently been approved by the Scottish Parliament. Any amendment will not remove the rights of individuals to object to a particular TRO and a local authority will need to consider carefully whether or not a hearing would remain appropriate or necessary in respect of a proposed order.

Consultation

4. Section 134 of the 1984 Act requires the Scottish Ministers to consult with such representative organisations as they think fit and a widespread consultation on this proposal was carried out. Stakeholders including road authorities, commercial groups and community councils were approached and individuals were also invited to submit comments. In total 22 responses were received.

5. Of these, 14 were either content with the proposals or offered no comment. The other eight respondents expressed concerns about the effect that changes to limiting waiting and loading times by the introduction of TROs could have; that the legislation was to be introduced retrospectively (which it is not); that the amendment could be used to allow deviation to the routes of any tram lines in Edinburgh which had already been debated and agreed by the Scottish Parliament; that these changes could be introduced without proper scrutiny of, or hearing into, any related TROs, and that any TROs associated with a scheme should be included as part of the initial design process so Parliamentary scrutiny can be given to the whole process and not just the outline of a scheme. The breaching of Article 6 in Section 1 of the European Convention on Human Rights (ECHR) and of Article 1 of Protocol 1 to the Convention were also cited but it is the Scottish Government's opinion that it is for the local authority to consider on a case-by-case basis whether or not the order they are promoting affects anybody's civil rights and obligations such that a hearing before an independent person would be appropriate to ensure compatibility with the ECHR. In any case, should they fail to hold such a hearing where it was required to secure compatibility with ECHR, then that would appear to be a potential ground of challenge to any order made. As such, it would be for local authorities to satisfy themselves that they were compatibly operating the process.

Financial Effects

6. This SSI could result in a limited financial benefit to the Scottish Government in that there is the potential for a reduction in the number of requests for hearings to be undertaken by the Directorate for Planning and Environmental Appeals.

Scottish Government Transport Directorate
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