

## **Business and Regulatory Impact Assessment - Final**

### **The Town and Country Planning (Cairnryan Border Control Posts) (EU Exit) (Scotland) Special Development Order 2021**

#### **Purpose and intended effect**

##### **Background**

Following the end of the EU Exit implementation period, goods entering the UK from the EU are subject to the same border entry requirements and controls as rest of the world goods.

Scottish Ministers are responsible for the enforcement of checks on animals, plants, plant products, product of animal origin and high risk foods not of animal origin. Enforcement is delivered through inspection facilities located at Border Control Posts (BCP).

In most cases, BCP are being provided by port operators<sup>1</sup>. However, the two ferry terminals at Cairnryan (the Port of Cairnryan and Loch Ryan Port) in Dumfries and Galloway do not have the necessary physical space to accommodate the required infrastructure and facilities within their boundaries. In accordance with the UK Border Operating Model, it is for government to provide facilities at an inland site in such circumstances. At the time of making the Order, it is understood that BCP need to be operational by 1 July 2021. Development of these facilities cannot commence until the necessary planning permission has been granted.

To support the timely delivery of this nationally important border infrastructure, this Special Development Order (SDO) grants temporary planning permission for their provision subject to a number of conditions. In doing so, the SDO is intended to limit disruption that may occur in and around Cairnryan if the required facilities are not developed, or if their operation is significantly delayed.

Powers for Scottish Ministers to grant planning permission by way of SDO are conferred by section 30(2)(b) of the Town and Country Planning (Scotland) Act 1997. The Order has been prepared as a contingency measure: it does not preclude planning permission for Cairnryan border infrastructure being sought through an application submitted to Dumfries and Galloway Council should such an approach be compatible with operational timescales of the BCP.

##### **Objective and rationale for Government intervention**

At the time of making this Order, specifications for the Cairnryan BCP have not been finalised and a preferred site is yet to be selected. The purpose of the SDO is to provide additional planning certainty while such details remain outstanding. Specifically, the SDO grants temporary planning permission for the provision of the BCP facilities on land located within 15 miles of the Cairnryan ports. The permission

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<sup>1</sup> Port operators have permitted development rights for certain types of development carried out on operational port land under Part 13 of Schedule 1 to the Town and Country Planning (General Permitted Development) (Scotland) Order 1992.

granted by the SDO is, however, subject to a number of important conditions and limitations.

In particular, the use of a specific site as a BCP must be expressly approved by Scottish Ministers before development can take place under the SDO. Such site-specific approval must be sought through a written submission which includes the information and details specified in the Order (e.g. an analysis of likely environmental effects and an assessment of traffic impacts).

The SDO requires that before this site-specific approval is sought, various parties must be given the opportunity to comment on the development proposals. These include owners and occupiers adjacent to the proposed development site and on access routes to the site, Dumfries and Galloway Council, the relevant community council(s) and statutory environmental bodies (NatureScot, Scottish Environmental Protection Agency and Historic Environment Scotland).

Furthermore, the SDO does not permit development within certain designated areas such as national scenic areas, European sites or sites of special scientific interest. Development permitted by the Order can only be carried out by, or on behalf of, the Scottish Ministers.

### **Consultation**

Given the delivery timescales associated with the provision of the BCP at Cairnryan, full public consultation has not been possible. However, we have engaged (and continue to engage) with key partners and stakeholders regarding the emerging proposals. These include:

- Dumfries and Galloway Council
- SEPA
- Nature Scotland
- Historic Environment Scotland
- UK Government
- South of Scotland Enterprise
- Port/ferry operators

Furthermore, as noted above, the SDO requires consultation to be carried out with specified parties before site-specific approval is sought from Scottish Ministers. A report summarising the outcome of this consultation must be included in the written submission made to Scottish Ministers when such site-specific approval is sought.

### **Options**

#### **A. Do Nothing**

As outlined above, the ports at Cairnryan do not have sufficient land available to provide the necessary infrastructure to carry out border checks that are required following EU Exit. It is the responsibility of government to provide these facilities at an inland site in such circumstances. Because the scale and specific location of the Cairnryan BCP have not – at the time of drafting – been identified, a planning application cannot be prepared and submitted. However, doing nothing risks delaying the delivery and operation of the BCP.

## B. Prepare an SDO

Granting temporary planning permission for the Cairnryan BCP through an SDO is intended to help manage delivery risks by providing additional planning certainty while detailed proposals are developed and a suitable site selected. In effect, the SDO establishes the principle of development within a 15 mile 'area of search' around the ports at Cairnryan but requires further, site-specific approval to be sought once additional detail about the location, scale and impact of the proposed development is available.

A similar approach has been taken by the UK Government, albeit on a broader scale: the Town and Country Planning (Border Facilities and Infrastructure) (EU Exit) (England) Special Development Order 2020 covers 29 council areas in England.

## **Sectors and groups affected**

The main sectors and groups which would be affected by the introduction of any BCP at Cairnryan are:

- Local Authority
- Port/ferry operators
- Haulage firms
- Road users
- Businesses reliant on imports and exports of goods

## **Benefits and Costs**

Based on figures from the Department for Transport<sup>2</sup>, 2.59 million tonnes of freight entered the two ports at Cairnryan in 2019, which equates to approximately 400k vehicles (freight movement only). We do not have information on what the value of these goods is. However, these figures provide a high level indication of the scale of disruption that may occur if the BCP are not provided, or if their delivery is substantially delayed.

Based on an assumption that 10% of goods arriving at the ports are coming from the Republic of Ireland, and applying this to the above volumes we could assume 40,000 vehicles and 250,000 tonnes of freight per annum would have to use an alternative route if we did not provide a BCP at Cairnryan.

## A. Do nothing

Doing nothing would increase the risk that the BCP are not provided or their delivery is delayed. In the short term, this is likely to cause disruption in and around Cairnryan, including increased congestion on local roads. Over the medium and longer term, hauliers may divert to alternative ports. Although we cannot quantify the precise level of impact, such an outcome could adversely affect the local and national economy. If large numbers of vehicles have to divert through alternative ports, this could increase haulage distances and associated costs. This would impact not just haulage firms but also businesses reliant on goods arriving into the UK at Cairnryan.

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<sup>2</sup> Port Freight Annual Statistics:

<https://www.gov.uk/government/statistics/port-freight-annual-statistics-2019>

## B. Prepare an SDO

By supporting the timely delivery of the Cairnryan BCP, the SDO is intended to avoid the potential costs identified above from arising.

### **Scottish Firms Impact Test**

As outlined above, discussions have taken place with key stakeholders, including the relevant port operators. We have not held discussions with individual businesses – the SDO is focussed on securing the necessary facilities that are required to allow goods to continue to pass through the ports at Cairnryan.

### **Competition Assessment**

By taking the do nothing approach there is potential that:

- The number of suppliers will be limited directly or indirectly;
- The ability of suppliers to compete would be more limited; and
- The choices available to consumers would be more limited.

By supporting the timely delivery of the BCP, the SDO will help to provide for an effective market where businesses, large and small, are able to compete to deliver services and products to consumers.

### **Consumer Assessment**

By supporting the timely delivery of the BCP, the SDO will help to limit disruption of the flow of goods arriving into the UK at Cairnryan. In doing so, it should help reduce delays and the need for hauliers to re-route to alternative ports that do have the necessary infrastructure in place.

Doing nothing would increase risks that the BCP would be delayed, which in turn could have a significant impact on goods arriving into the UK at Cairnryan. This could lead to congestion in and around the ports, and prompt hauliers to divert through alternative ports. Such delays and potential cost increases could adversely impact on businesses and consumers (in terms of the availability, quality and price of foods and services).

### **Test run of business forms**

No new business forms are to be introduced.

### **Digital Impact Test**

We do not consider that the SDO will have unintended consequences in circumstances where the impacts of technology and technological advances on the current and future delivery and intent of the measure in question.

### **Legal Aid Impact Test**

We do not consider that the SDO will have any impact on Legal Aid.

### **Enforcement, sanctions and monitoring**

The SDO grants temporary planning permission for the provision of border facilities serving the ports at Cairnryan. It is subject to a number of conditions and limitations that need to be complied with. As the relevant planning authority, Dumfries and Galloway Council will be responsible for ensuring that any development is carried out in accordance with the SDO and relevant conditions attached to it. Planning authorities have a range of enforcement powers at their disposal should those be required.

### **Implementation and delivery plan**

The SDO grants temporary planning permission, which expires five years from the date that any BCP developed pursuant to the Order becomes operational.

### **Summary and recommendation**

It is recommended that the SDO is progressed as a contingency measure to support the delivery of the BCP required at Cairnryan.

- **Summary costs and benefits table**

| <b>Option</b> | <b>Total benefit per annum:<br/>- economic, environmental, social</b>   | <b>Total cost per annum:<br/>- economic, environmental, social<br/>- policy and administrative</b>  |
|---------------|---|---|
| A             | <ul style="list-style-type: none"><li>• The provision of BCPs would require the submission of a planning application which would be subject to consultation and consideration in the usual way.</li><li>• This would provide some certainty of process to the applicant, planning authority and stakeholders.</li></ul> | <ul style="list-style-type: none"><li>• Significant disruption to the port, businesses and consumers likely if delivery and operation of BCPs are delayed.</li><li>• This could lead to goods being diverted to other ports resulting in lost revenue for ferry operators, the ports at Cairnryan and the local economy.</li><li>• Potential for congestion in and around the port.</li><li>• Uncertain planning timescales and outcome could increase costs.</li></ul> |
| B             | <ul style="list-style-type: none"><li>• Provides certainty by granting permission and prescribing process for securing site-specific approval</li><li>• Reduced risk of delay to the delivery and operation of BCP.</li></ul>   | <ul style="list-style-type: none"><li>• SDOs have been used very infrequently so processes less familiar to stakeholders than planning application.</li></ul>   |

- Limits risk of significant congestion in and around the port.
  - Provides for the continued passage of goods through the port, providing consistency and certainty to businesses and consumers – helps ensure Cairnryan remains an attractive port for ferry operators and haulage firms.
  - Supports the local economy through the continued use of the port and the potential creation of jobs in the BCPs.
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I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that business impact has been assessed with the support of businesses in Scotland.

**Signed: Aileen Campbell**

**Date: 22<sup>nd</sup> February 2021**

**Minister's name: Aileen Campbell**

**Minister's title: Cabinet Secretary for Communities and Local Government**

**Scottish Government Contact point: Tom Winter**