

Accelerating delivery of active travel infrastructure

Briefing in support of amendments 174 & 175 in the name of John Finnie MSP at stage 3 of the Transport (Scotland) Bill on 9 October 2019

Summary

Amendment 174 removes the process to be followed by local authorities when undertaking a redetermination order from the Roads (Scotland) Act 1984, and inserts instead a referral to secondary legislation for the process to be followed. Amendment 175 inserts exactly the same process into secondary legislation. This allows any future changes to the process to be undertaken quickly and simply once further consideration, and consultation with stakeholders, has taken place.

Background

At present if a local authority wants to build a segregated cycle lane, or to extend a footway, they usually need a legal order called a Redetermination Scotland Order (RSO). This can be a lengthy process, and if there are public objections to such an order, the matter *must* (under the Roads Scotland Act 1984) be referred to Scottish Ministers for a decision. This can add up to 18 months to the process, significantly delaying the delivery of local active travel infrastructure.

At stage 2 of the Transport (Scotland) Bill, John Finnie MSP tabled a number of amendments (321-324) which would have streamlined the process and allowed local authorities to determine these orders themselves, without referral to Scottish Ministers. These amendments were not supported by the Scottish Government, who, while supporting the principle of streamlining and clarifying the process, argued that further consideration should be given to the right balance between a fair process and a quick one. John Finnie accepted this argument and therefore withdrew his amendments.

The current amendments (174 and 175) accept the Scottish Government point that further consideration is required. They do not *change* the process for RSOs. They **merely change where that process is defined**, from primary to secondary legislation. This will allow the further consideration which the Scottish Government requires. If, following that further consideration, it is agreed to change the process, this can be done relatively easily, through amendments to a statutory instrument. Likewise, if it is agreed that no changes are needed, the statutory instrument can remain unaltered.

Why are these amendments needed?

The current need to refer all objections to an RSO to Ministers, regardless of the scale of the project or the number or nature of the objections, adds considerably to the time and resource required to manage the process by local authorities. This therefore delays the delivery of walking and cycling infrastructure.

The Scottish Government accepts the need to streamline and simplify the process¹, but argues that further consideration is needed on how that streamlining is done, and in particular to preserve the balance between a fair process and a quick one. John Finnie MSP accepts this argument, and therefore **the current amendments do not change the process for RSOs.**

What the current amendments do, rather, is to transfer the process from primary legislation to secondary legislation. Any agreed changes can therefore be made in due course through amendments to a statutory instrument. This process is considerably quicker and easier than making changes to primary legislation, which would require a new Bill, or an amendment to another Bill. It is not considered there will be another legislative opportunity to make this change for many years. A delay of that magnitude could severely limit the ability of local authorities to deliver walking and cycling infrastructure.

What is the current wording in the Roads (Scotland) Act 1984 that amendment 174 replaces?

The current wording is as follows:

“(3) Subsections (1) and (2) of section 71 of this Act shall apply in relation to an order under subsection (2) above as they apply to an order under section 68 or 69 of this Act.”²

Subsection (2) above refers to redetermination orders (RSOs), so the current wording of this clause effectively says that the same process must be followed for RSOs as for stopping up orders (which is set out in 71(1) and 71(2) of the Act). Those clauses require referral to Scottish Ministers if there are unwithdrawn objections³.

Does this amendment affect any other processes, other than redetermination orders?

No. This amendment only affects the process for Redetermination Scotland Orders (RSOs) which are described in section 152(3) of the Roads (Scotland) Act 1984. It does not affect the process for stopping up orders – these are set out in section 71 (1) and 71 (2) of the Act which remain entirely unchanged by the present amendments.

For technical queries please contact:

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¹ “I have some support for the principle behind John Finnie’s amendments of clarifying and streamlining the procedures for making redetermination orders [...]” Michael Matheson MSP, 26 June 2019. See Official report, col 69-70

<http://www.parliament.scot/parliamentarybusiness/report.aspx?r=12214&mode=pdf>

² <http://www.legislation.gov.uk/ukpga/1984/54/section/152>

³ <http://www.legislation.gov.uk/ukpga/1984/54/section/71>