

# Scottish Parliament Cross Party Group on Cycling, Walking and Buses

## Urgent issues relating to Traffic Regulation Orders

20 October 2020

### 1. Delays in reforming Traffic Regulation (TRO) and Redetermination (RSO) Orders

It is recognised<sup>1</sup> by the Cabinet Secretary for Transport, Infrastructure and Connectivity, Michael Matheson MSP, that the above regulations have problems, sometimes causing inordinate delays in local authority active travel schemes. The main problems are described in appendix A below.

As one example, the City of Edinburgh's flagship west-east CCWEL city centre cycle route project has recently suffered a completely unacceptable 2-year delay because a small number of unwithdrawn objections to a TRO and RSO had to be referred to the Scottish Government for a hearing (for the TRO) and Ministerial decision (for the RSO). The objections to the TRO were wholly dismissed by the Reporter, and similarly for the RSO apart from one very minor modification by the Council.

John Finnie MSP proposed amendments to the Transport Bill to resolve such problems. However, during an evidence session the Cabinet Secretary said further consideration was needed, and that he would consult on this with a view to modifying the regulations at a later date if appropriate. With this assurance, John Finnie withdrew his amendment. Subsequently the government amended the Transport Bill such that Traffic Order regulations can now be amended by regulation without the need to await a further Act of Parliament.

Unfortunately there is little sign of urgency or indeed progress with completing the promised consultations and bringing forward proposals. Meanwhile local authority active travel schemes suffer the threat of unwithdrawn objections and consequential excessive delays. In Edinburgh's case, for example, this could introduce a major delay to the flagship north-south project, Meadows to George Street, for which Traffic Orders will be required soon.

We urge the Scottish Government to expedite action on this issue. The Government has bold ambitions to increase active travel, yet this major stumbling block is allowed to remain.

### 2. Spaces for People (SfP) – Traffic Order implications

The SfP projects being implemented in Councils across Scotland use Temporary Traffic Regulation Orders (TTRO). Our understanding is that TTROs have effect until the temporary issue which necessitates them is resolved. If the issue continues beyond 18 months then we understand that the TTRO can and must be renewed. **Clearly the SfP TTROs are likely to lapse if and when there is a sustained fall in COVID cases to a low background level – whether through natural processes or widespread availability of a vaccine. This could even be Spring/Summer 2021.**

At the start of the epidemic there were no powers for Councils rapidly to implement schemes for purposes such as spacing or encouraging active travel rather than bus. To his credit, the Cabinet Secretary expeditiously introduced new guidance<sup>2</sup> to allow TTROs to be used for such purposes.

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1 <http://www.spokes.org.uk/wp-content/uploads/2019/08/1908-ScotGov-reply-F20190021814.pdf>

2 <https://www.transport.gov.scot/publication/coronavirus-covid-19-guidance-on-temporary-traffic-regulation-orders-and-notice/>

The Cabinet Secretary and many Councils have expressed the desire for all or most SfP schemes, if successful, to become permanent (with any appropriate 'try then modify' improvements). Currently this can only be done by the Council going through the full TRO and/or RSO process (as appropriate) for each scheme. These processes are a major administrative burden and Edinburgh Council, for example, already has a waiting list of schemes (other than Spaces for People) needing TROs and/or RSOs.

Edinburgh Council already has some 70 SfP schemes<sup>3</sup> in place or in process, many of which (though not all) would require full TROs and/or RSOs to be made permanent.

Moreover, as in (1) above, if there are certain types of unwithdrawn objections these have to be referred upwards for a government Hearing or Ministerial decision, which can take 24 months or more.

For all these reasons, it is very possible that TRO/RSO processes for many SfP schemes would not be completed before the TTRO lapses, potentially leaving Councils with no legal option other than to remove the scheme.

One possible ameliorative measure would be to use an 18-month Experimental TRO (ETRO) when the TTRO lapses, but this still requires significant administration (although Hearings and Ministerial Decisions are not required). Furthermore an ETRO cannot be extended, and the full TRO/RSO process would still have to be undertaken and completed before the ETRO expired.

In England the processes are far simpler. RSOs do not exist at all, and there are simplified procedures to make successful ETRO schemes permanent.

It is essential that the Cabinet Secretary looks into these issues with the same urgency as he demonstrated in issuing the revised TTRO guidance at the start of the pandemic. Otherwise, Councils will be in an impossible situation and we greatly fear that many successful Spaces for People schemes will have to be removed at the end of their TTRO (and possibly ETRO) lifetime.

## **Appendix A - Problems with TRO and RSO regulations**

*This appendix comprises (with minor modifications) Appendix 1 of the paper<sup>4</sup> Faster and Better Project Implementation through 'Try then Modify' to the Cycling and Society 2020 annual symposium<sup>5</sup>.*

The Scottish Government's Traffic Regulation Order (TRO) and Redetermination Order (RSO) labyrinth is one of the major reasons for big delays - and it ties the hands of Councils in making decisions, and timeous decisions, on their own local traffic projects.

Here we describe what are perhaps the two worst aspects, which have caused a huge waste of expert staff time for Edinburgh Council and unpardonable delays for the public waiting for funded road safety and place schemes to actually appear on the ground.

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3 <http://www.spokes.org.uk/documents/members-campaigning/edinburgh/edinburgh-covid-schemes/>

4 <http://www.spokes.org.uk/wp-content/uploads/2020/09/2008-CS-symposium-v5-DdF-Try-then-Modify-SUBMITTED.pdf>

5 <http://www.cyclingandsociety.org/2020symposium/>

## Treatment of objections to Traffic Orders

- As we understand it any unwithdrawn TRO objection affecting loading outside peak hours automatically triggers a Public Hearing (similar to a Public Inquiry) under a government Reporter, whereas all other types of objection to TROs (including major decisions such as road closures, speed limit changes, new parking zones) can be decided by the Council without the need for a hearing. The inconsistency is glaring.
- Similarly, any unwithdrawn RSO objection, cannot be decided by the Council and must be referred to the Scottish Government for decision and for a possible Public Hearing. Note that RSOs [Redetermination Orders] do not even exist in England whereas in Scotland they are required for any conversion of street space from one use to another
- In both cases the triggering of a Public Hearing or mandatory reference to Scottish Ministers is completely unrelated to the extent or impact of the proposed restriction. So, for example, our understanding is that a single TRO objection to a 5m extension of a prohibition on loading during the working day (say a 10am to 4pm prohibition) would trigger a mandatory Public Hearing. Similarly, a single RSO objection to redetermining a 5m long and 1.5m wide section of a main road as cycle track would trigger reference to Scottish Ministers
- In contrast to the above paragraph, and illustrating the inconsistencies of the current procedures, TROs covering many kinds of major change (eg closing city centre streets to through traffic, parking regulations covering any number of streets) can be made by Councils without Public Hearings. Hearings may be held at the Council's discretion - this occasionally happens, typically when there are large numbers of objections, though not always even then.
- Whilst there have been many reasons for the 6+ years (so far) of planning and preparation for Edinburgh's CCWEL cycleroute, almost 24 months of this were due to the above tortuous and inconsistent Scottish Government rules on TROs and RSOs. The CCWEL delay resulted from 8 TRO objections (all eventually [dismissed by the government Reporter](#)) and 36 RSO objections ([dismissed by Ministers, with one minor amendment](#), after literally 2 years of cogitation).

## Experimental Traffic Regulations Order (ETRO) regulations

- An Experimental Traffic Regulation Order can run for up to 18 months, and cannot be extended. However, the results of a traffic experiment (which may need to run a full year for proper evaluation) are unlikely to be available in time to pass the Orders to make the scheme permanent before it has to be removed – not least because the above features of TROs and RSOs may trigger many months or even years of delay.
- In the case of Edinburgh's George Street, for example, a successful [experimental segregated cycleway scheme](#) had to be removed in 2015 rather than staying until a permanent scheme was agreed – thus now in 2020 we have had another 5 years of non-segregated provision, with little sign of a permanent scheme any time soon.
- Furthermore we understand that in England, should a Council wish to make an Experimental TRO permanent, then the TRO legal process is streamlined. That is not the case in Scotland.