

Transport Scotland

Consultation on Traffic Regulation Orders¹

... response from Spokes the Lothian Cycle Campaign, July 2021

Having seen the impacts locally of the current labyrinthine and inconsistent Traffic Orders processes, Spokes is very pleased to see this consultation, and we look forward to early action. We also appreciate the useful explanations/background given on the consultation page.

The present regulations have resulted in a 2-year delay to Edinburgh Council's flagship CCWEL² cycle infrastructure project, which, in addition to the resulting frustration and lost opportunity, has had significant financial implications which in turn have caused cuts to the scheme – and further delay.

Secondly, the unfit-for-purpose regulations are currently forcing Edinburgh Council to undertake labyrinthine, costly processes, causing much public confusion and aggravation, to convert successful Spaces for People projects into permanent schemes. Instead of sensible consultation and a single opportunity for formal objections, the non-statutory consultations already undertaken around TTROs will be followed by ETRO pre- and during- consultations, followed by a further TRO consultation; in other words at least four public consultations before SfP schemes, many of which are quite simple, can become permanent. It will be no surprise if some local authorities drop successful SfP schemes because the legal processes are too overburdensome

Spokes has raised these issues on many occasions, notably through the Scottish Parliament Cross-Party Group on Cycling, Walking and Buses³ and we are pleased, at long last, to see signs that the Scottish Government is getting closer to a conclusion and action.

Finally, some of our suggestions below (Q7a Q7c, Q11a) would require primary legislation, which we appreciate cannot be immediate. These suggestions therefore should be noted for consideration at the earliest possible opportunity, whether in a future Transport Bill or some suitable other Bill.

Experimental Traffic Regulation Orders (ETROs)

Question 1: Are you content with current procedures for ETROs in Scotland?

No

Question 2: Do you agree or disagree that Scottish Ministers should seek to make amendments to the procedure for making ETROs and TROs which give permanent effect to ETROs?

Agree

Question 3: Do you agree that before making an ETRO traffic authorities must consult with the police and any other bodies that would be required for a TRO having the same effect?

Agree

1 <https://www.transport.gov.scot/consultation/traffic-regulation-order-review-consultation/>

2 <https://www.edinburgh.gov.uk/cycling-walking-projects-1/city-centre-west-east-link>

3 <http://www.spokes.org.uk/wp-content/uploads/2021/06/2010-CPGCWB-paper-re-TRO-issues.pdf>

Question 4: Do agree or disagree that traffic authorities should publish notice of making an ETRO at least 7 days before it will have effect?

Agree

Question 5: Do you agree or disagree that ETROs should be capable of being amended during the first 12 months of the ETROs maximum duration?

Agree

Question 6: Do you agree or disagree that if an ETRO is amended during that period that there must be a further 6 month period where representations and objections can be made?

Agree

Question 7: Do have any comments regarding your answers to the questions above or anything else on the topic of ETROs that you wish to share as part of this consultation? If your comments are in relation to a particular question please be specific about which question.

(a) The 18-month maximum ETRO period is too short to give sufficient time for schemes to be adequately tested, assessed, modified and then re-assessed. In particular, an experimental scheme should be able to run for a full 12 months after any modifications have been made, if the local authority deems that a full year's operation is necessary to properly assess its impact and value.

We do strongly welcome the government's proposed modifications to the current system, so that schemes can be made permanent with less bureaucracy than at present, whilst still allowing for modification, widespread consultation and formal objections during the experimental process. However, the new process will still be less than optimal, and appears to have been designed with particularly tight criteria so as to fit the 18-month constraint.

We appreciate that the 18-month requirement is laid down in primary legislation (section 9(3) of the Road Traffic Regulation Act 1984⁴) and so cannot be amended as part of the current proposals. However we urge that the opportunity to amend this is taken next time there is a new Transport Bill, after which the Regulations could be further amended.

(b) [re Q3] Currently Edinburgh Council consults relevant city-wide active-travel stakeholders (Spokes on cycling issues, Living Streets for pedestrian) in addition to blue light services, bus, freight, etc prior to TROs or ETROs being publicly advertised. Consulting active travel stakeholders prior to public advertisement should be a requirement of the ETRO process.

(c) There should be a process for converting a TTRO into an ETRO, where the TTRO is introduced for a temporary purpose to avoid some danger but where experience with the temporary arrangement then becomes seen as a potentially useful longer-term initiative, as has been the case with many SFP TTRO schemes. The problem which has arisen with the current system is that the few months required to set up an ETRO may be subsequent to the expiry of the TTRO, meaning, presumably, that the scheme has to be removed on expiry of the TTRO, only to be replaced a few weeks or months later once the ETRO is in place.

However, it may be that the current consultation would provide an alternative solution – there is mention of publishing a notice 7 days before an ETRO comes into effect. Does this mean that an ETRO will be enabled to be introduced in just 7 days? If so, how does that square with the (sensible) suggestion for stakeholder consultation prior to commencing the ETRO (and our suggestion in (b) that stakeholder consultation should be somewhat wider than appears to be proposed)?

In any case, some solution to (c) is needed. If the optimal solution requires primary legislation then it should be kept in mind for the next Transport Bill, as with (a) above.

4 <https://www.legislation.gov.uk/ukpga/1984/27/contents>

Loading Restrictions

Question 8: What are your views in relation to the need for a Public Local Inquiry (PLI) when objections are made in relation to a proposed TRO containing loading or unloading restrictions?

The local authority regulations require a hearing (PLI) to be held if there are objections to proposed local authority TROs which contain certain types of prohibitions or restrictions (regulation 8 of the the Local Authorities Traffic Order (Procedure) (Scotland) Regulations 1999⁵). In particular...

- Category 8(1)(a), a TRO which contains prohibitions on the loading or unloading of vehicles for any period outside 'peak' hours.
- Category 8(1)(b), a TRO to create one-way travel

Even one unwithdrawn objection in such cases will lead to an often costly and time-consuming PLI.

In contrast, there is no automatic obligation to hold a PLI for the vast majority of TROs, including TROs of much greater consequence such as closing city centre streets to through traffic, or parking regulations covering any number of streets. Decisions as to whether a PLI is necessary in relation to any objections to such TROs are routinely taken by the local authority.

This is glaringly inconsistent, and all such local decisions should be taken locally – though with the option for the council to request a PLI should that be deemed appropriate.

As an example, whilst there have been many reasons for the very disturbing 7+ years (so far) of planning, preparation and delay for Edinburgh's CCWEL cyclerooute, almost 24 months of this were due to the above tortuous and inconsistent Scottish Government rules on TROs (and RSOs). This major element of the CCWEL delay resulted from 8 TRO objections, all eventually dismissed by the government Reporter⁶ and 36 RSO objections, dismissed by Ministers, with one minor amendment⁷ after literally *two years* of cogitation (see dates in letter). This delay, in turn, has led to higher than anticipated tender costs and therefore a further delay for a cost-saving exercise and deletion of elements of the scheme⁸.

Although the above is an example of delay to a major council flagship project, and with significant financial implications, many small but locally vital schemes can equally be delayed. What sense is there, for example, in delaying for 12-24 months the installation of a short set of double yellow lines outside a school for safety reasons, perhaps after an injury incident, and perhaps in the face of a single unwithdrawn objection, so that a government reporter can hold a Public Inquiry on what should be a decision for the local council?

5 <https://www.legislation.gov.uk/uksi/1999/614/contents/made>

6 <https://democracy.edinburgh.gov.uk/documents/s24011/Item%206.7%20-%20City%20Centre%20West%20to%20East%20Cycle%20Link%20and%20Street.pdf>

7 <https://cycleparking.net/cycle-routes/CCWEL-RSO.pdf>

8 Report 7.8 at <https://democracy.edinburgh.gov.uk/ielistDocuments.aspx?CId=136&MIId=5663&Ver=4>

Redetermination Orders

Question 9: Are you content with the procedures regarding redetermination orders?

No

Question 10: Do you think legislation should be reviewed in light of the need to refer a proposed order to the Scottish Ministers if there are objections to it?

Yes

Question 11: Do you have any other comments in relation to the procedure for redetermination orders?

(a) In the first place, it is unclear why these regulations exist. It is our understanding that in England and Wales these are decisions for the local authority, with no legal order requirement. Even more puzzling, it also appears that different Scottish local authorities have different interpretations of what is required by the Scottish legislation⁹, with Edinburgh Council using RSOs frequently whilst Glasgow does so rarely or never (this is by rumour – we have not checked with that Council).

Removing the requirement for RSOs, as in England, and leaving such decisions entirely to the local authority, should be a priority next time there is a legislative opportunity.

As an example of the issues resulting from RSOs, and as referenced in Q8 above, a further reason for the delay and substantially increased costs of Edinburgh's flagship CCWEL project, was the literally 2-year delay resulting from unwithdrawn RSO objections which, as with the TRO objections, were eventually dismissed by the Government (with one very minor modification). And again, similar could apply even to very small schemes such as the redesignation of a few square metres of carriageway or footway outside a school.

(b) However, until such time as the need for RSOs is abolished, as in England and Wales, we suggest changes/additions to guidance, as follows...

Clarification of the circumstances in which RSOs are needed is vital, given that different Councils interpret the legislation in different ways and sometimes with very different consequences – as in our earlier example of Edinburgh's CCWEL project, where some Councils would not have published the RSO which, in Edinburgh's case, resulted in a 2-year delay, increased costs and cuts to the project.

In our view RSOs should only be required where the change to the right of passage is a major one. Furthermore, given the government's transport hierarchy, they should not be required at all where the proposed change would improve opportunities for active travel – for example a new or extended footway or segregated cycle lane..

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⁹ Roads (Scotland) Act 1984, section 71 <https://www.legislation.gov.uk/ukpga/1984/54/contents>