

Consultation on Traffic Regulation Orders – Response by South East Scotland Transport Partnership

Background

(N.B. the paragraphs below form part of the consultation document and have been retained to allow Members to gain a fuller understanding of the context of the consultation. References to 'we' and 'us' refer to the Scottish Government).

Local Authority Concerns

The Scottish Government committed to a review of traffic regulation order (TRO) procedures following concerns raised by local authorities, some of which were discussed in evidence sessions on the Restricted Roads (20 mph Speed Limit) (Scotland) Bill. The Rural Economy and Connectivity Committee report on that Bill welcomed and encouraged the TRO procedure review. Officials have been working with local authorities since then to identify potential barriers to the implementation of local 20 mph speed limits and other measures which are implemented by TROs.

This review was further widened to take account of the additional information received during the passage of the Transport (Scotland) Act 2019.

TRO Review Working Group Feedback

Transport Scotland Officials have been working with a focused group of local authorities and stakeholders to gather information and experiences of the TRO process with a view to considering together what potential improvements could be made.

Evidence has also been gathered from the Spaces for People programme by way of webinars with local authorities.

Spaces for People is a new, temporary infrastructure programme in Scotland which offers funding and support to make it safer for people who choose to walk, cycle or wheel for essential trips and exercise during COVID-19. This program is funded by the Scottish Government and managed by Sustrans Scotland.

[Spaces for People: Making essential travel and exercise safer during Coronavirus - Sustrans.org.uk](https://www.sustrans.org.uk/spaces-for-people)

During these webinars, hosted by Sustrans, local authorities have been given the opportunity to discuss any issues that they may be having with implementation of schemes.

Additionally, the TRO process has been discussed at some length during the work undertaken with all 32 local authorities as part of our Parking Standards Working Group to inform the secondary legislation required for the parking elements of the Transport (Scotland) Act 2019.

COVID-19 Pandemic and Active Travel

Since we started undertaking the TRO review the backdrop has shifted due to the COVID-19 Pandemic. The requirement for physical distancing and increased use of active travel measures has altered how many roads are used. The Scottish Government issued [guidance](#) in April 2020 to support local authorities in considering using their existing statutory powers to temporarily regulate roads in their areas in order to respond as necessary to the pandemic. Many local authorities used temporary traffic regulation orders (TTROs) to put in place measures to support the need for road users to maintain physical distancing measures and to respond to changes to road use such as increased numbers of pedestrians and cyclists. These measures, such as additional cycle lanes and extended pavement space, were developed under the Spaces for People programme.

The measures employed under Spaces for People were developed as temporary responsive measures but a number of local authorities have indicated that there are various aspects that they may consider adapting into longer term or permanent measures. This requires detailed consideration and consultation and local authorities will have to consider their statutory powers such as those for bringing forward a permanent TRO or an experimental TRO and follow the appropriate connected procedures.

Legislation

Traffic authorities have powers under the [Road Traffic Regulation Act 1984](#) (“the 1984 Act”) to regulate traffic on roads they are responsible for. The relevant traffic authority for a road in Scotland is the same as the roads authority for that road under the [Roads \(Scotland\) Act 1984](#). This means the Scottish Ministers are the roads and traffic authority for all trunk roads (including motorways) and local authorities are the roads and traffic authorities for all other roads in their area.

Types of Traffic Regulation Orders

Temporary Traffic Regulation Orders (TTROs)

If the traffic authority for a road are satisfied that traffic on a given road should be restricted or prohibited due to works on or near the road, because of the likelihood of danger to the public or damage to the road, or because of certain litter clearing and cleaning duties the authority may make a TTRO restricting temporarily the use of that road by vehicles or by vehicles of particular types or by pedestrians.

The maximum duration for a TTRO is generally 18 months on roads used by motorised vehicles and 6 months on footpaths, bridleways, cycle tracks or byways.

When making a TTRO traffic authorities must comply with the procedural requirements in the [Road Traffic \(Temporary Restrictions\) Procedure Regulations 1992](#).

Traffic Regulation Orders (TROs)

A TRO can be promoted for a variety of reasons set out in the 1984 Act, such as avoiding danger to persons or other traffic or for facilitating the passage of traffic on

the road, and they must be indicated by appropriate road signs and/or markings. TROs are the mechanism that allow traffic authorities to implement changes to the road network. They can be used for a variety of things including, for example, delineating parking restrictions, prohibiting turns and setting speed limits.

It is for each traffic authority to determine whether and how they should exercise their functions under the 1984 Act however, in taking forward TROs, local authorities must comply with the [Local Authorities Traffic Order \(Procedure\) \(Scotland\) Regulations 1999](#) which specify procedural requirements such as publication of proposals and dealing with any objections received.

There are separate procedure regulations ([the Secretary of State's Traffic Regulation Orders \(Procedure\) \(Scotland\) Regulations 1987](#)) for TROs made by the Scottish Ministers.

Experimental Traffic Regulation Orders (ETROs)

Section 9 of the 1984 Act enables traffic authorities to make experimental traffic regulation orders (ETROs) for the purpose of carrying out an experimental scheme of traffic control. These can have effect for up to 18 months. The procedure regulations for TROs also apply to ETROs with some minor adjustments.

Findings to Date

The feedback received from the TRO Review Working Group, from our Parking Standards Group and from the Spaces for People webinars found that the overall consensus is that local authorities are generally content with the way that the TRO process works. However, issues have been raised and we have identified some proposals and matters to explore further within this chapter. Officials have categorized these into short term and medium to long term work streams.

Short Term

We propose to consult on and amend the relevant procedural regulations in relation to ETROs.

We will also consult on whether there should be any changes to procedures in relation to:

- Loading Restrictions in TROs
- Redetermination Orders made under the Roads (Scotland) Act 1984

Medium to Long Term

Further work required in relation to:

- Methods of advertising TROs and associated costs.
- Digitization of TROs

Experimental Traffic Regulation Orders (ETROs)

ETROs appear to be very rarely used in Scotland. Feedback from the local authorities we have engaged with through our working groups is that the existing ETRO legislation offers little benefit as the procedure for such orders does not provide a structured way to genuinely consult and modify along the way with a view to reaching a longer term outcome that is locally supported. To make a permanent change to traffic regulation giving effect to a successful ETRO a new TRO process must be embarked on within the duration of the ETRO to avoid a gap in coverage when the ETRO ends. This means that multiple procedures must be followed for the same proposal.

Scotland - legislation

The relevant procedural regulations for a traffic authority making a TRO also apply to ETROs with the disapplication of the requirements in relation to publication and notice of proposals in relation to ETROs for trunk roads. This means in order to make an ETRO on a trunk road the traffic authority must comply with the relevant TRO consultation requirements (such as consulting with the police) and then after making the order they must comply with the requirements in relation to notification and publishing notice of making the order.

In relation to ETROs on local roads, in most cases the full TRO procedural requirements must be followed in relation to consultation, publication and considering objections before the ETRO can be made. The requirements in relation to publication and notice of proposals are disapplied in certain limited circumstances (continuing the ETRO within the maximum duration of 18 months, making the ETRO shorter or less stringent and revoking the ETRO).

England & Wales - legislation

It appears that ETROs are more commonly used in England and Wales. The procedure regulations for TROs there are the Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996 and the Secretary of State's Traffic Orders (Procedure) (England and Wales) Regulations 1990. Similarly to the Scottish regulations, the application of these is modified in relation to ETROs with the disapplication of prior publication of proposals and usual objections provisions. However, in addition they contain certain specific provisions in relation to ETROs and TROs which give permanent effect to ETROs.

In summary, this results in a procedure as follows:

- Consultation (Police, emergency services, freight groups etc.)
- Notice of making the order is published at least seven days before the order will have effect.
- This notice must include a statement that the traffic authority is considering making the effect of the order permanent and invites any objections to be made within the first 6 months of the order having effect.
- If the ETRO is varied by a subsequent order the 6 months run from the time any such variation has effect.
- The usual provisions continue to apply in relation to objections and hearings.

- At the end of the experimental period a TRO may be made giving permanent effect to the ETRO and the traffic authority does not require to follow the usual consultation, notification and objection requirements, provided that no variation or modification of the ETRO was made more than 12 months after it was first made;
- Any objection made in relation to the ETRO is to be treated as though it was an objection to the TRO giving permanent effect to the ETRO, this has the effect of allowing the traffic authority to address objections and hold any necessary hearings while the ETRO is in effect.
- The usual procedures apply after making the permanent TRO (such as in relation to publication and notification).

Our Proposals

As our evidences suggests that traffic authorities find little benefit in the present procedure for ETROs in Scotland and they are underused we propose to amend the TRO procedure regulations.

We consider that the ETRO procedures could be adjusted to provide traffic authorities with a flexible way to trial experimental traffic management solutions and consider their impacts in action and in taking account of public feedback and objections. It would allow traffic authorities to develop their evidence base for what works and what doesn't and allows them to adapt to public feedback quickly. This in turn gives the public an opportunity to voice their concerns and see positive changes being made on the ground.

We therefore propose a new ETRO process for Scotland to brought forward in regulations.

Before the order comes into effect

- Consultation should still be required and held with the usual bodies relevant to a TRO such as Police Scotland, the other emergency services, freight groups etc.;
- After making an ETRO notice is published at least seven days before the order will have effect;

During the experimental order period

- Objections would be invited and considered within the first 6 months of the experimental period;
- ETROs could be varied or amended to take account of the experimental findings or any objections and representations.
- ETROs can be amended at any time during the first 12 months of the experimental period as the objection period must be capable of running for a further 6 months from the date of any amendment to the ETRO;
- there would remain a maximum duration of 18 months for an ETRO as this is set out in the primary legislation (section 9(3) of the 1984 Act);

Procedure at the end of the experimental period

- The traffic authority, in view of all of the evidence gathered and in consideration of any objections and representations made in the course of the duration of the ETRO, would be able to make a decision on whether to remove the experimental traffic management or proceed to make a TRO giving permanent effect to the provisions of the ETRO at the end of the experimental period.
- There would be no requirement to undertake an additional period of consultation and objection when a traffic authority considers it is appropriate to make a TRO giving permanent effect to an ETRO (any objections to the ETRO will have already have been considered and addressed as appropriate during the experimental period).
- The usual publication and notification procedures will reply in relation to the making of the TRO.

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

No

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

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

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

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

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

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 you are referring to.

Please enter your comments here:

SEStran supports the amendments to the ETRO process which allow the experimental order to be made permanent at the end of the experimental period, avoiding the need to essentially promote a further TRO to replace the experimental order before it expires.

The whole process of ETROs should be reviewed as a root and branch review of the legislation. However, don't disagree that proper notice and ability for objections should in principle be available to the public and other stakeholders.

Regional Transport Partnerships (RTPs) should be statutory consultees for these and other forms of TRO.

Loading Restrictions

The local authority procedure regulations require a hearing (a Public Local Inquiry (PLI)) to be held if there are objections to proposed local authority TROs which contain certain types of prohibitions or restrictions (see regulation 8 of the the Local Authorities Traffic Order (Procedure) (Scotland) Regulations 1999).

One of those categories is a TRO which contains prohibitions on the loading or unloading of vehicles on a road. These are often referred to as loading bay TROs. Through our TRO Review Group and Parking Standards Group, some local authorities raised concerns that this can result in one objection leading to an often costly PLI whereas there may be some circumstances in which a PLI is not necessary to determine whether the proposal should proceed.

In contrast, there is no automatic obligation to hold a PLI on the vast majority of TROs, such as those putting in place double yellow lines and other traffic control measures and decisions as to whether a PLI is necessary in relation to any objections to those TROs are routinely taken by the local authority.

The Scottish Government is therefore keen to gather views from local authorities, members of the public and other interested groups as to whether there is a need to revise the legislation in relation to holding PLI's where there are objections to TROs containing loading or unloading restrictions.

8. What are your views in relation to the need for a PLI when objections are made in relation to a proposed TRO containing loading or unloading restrictions?

Please enter your comments here:

No view as a Regional Transport Partnership. This is an operational matter for roads authorities to respond on.

Redetermination Orders

During the work on the TRO review some consideration was given to another category of roads order which are not TROs but in some circumstances may have a similar outcome, these are redetermination orders made under section **152(2)** of the Roads (Scotland) Act 1984. Redetermination orders **enable a road authority to redetermine the means of public right of passage over a road**, for example, designating a footway or part of the carriageway of a road is to become cycleway. It is open to local authorities to consider whether a redetermination order or a TRO would best achieve their intended outcome or indeed a combination of the two may be useful as a redetermination order alone may not achieve the wider traffic management intentions (e.g. banning certain turns or in relation to parking).

Some local authorities have raised concerns about the procedure for dealing with objections to proposals for redetermination orders. Where there is an objection to such an order the local authority must refer the matter to the Scottish Ministers for confirmation of the proposals (see section 152 as read with section 71 of the [Roads \(Scotland\) Act 1984](#)). These local authorities have suggested, as with most TROs, the decision to proceed is capable of being taken at a local level and where necessary referred to a PLI.

One local authority indicated they considered that both a TRO and redetermination order would be required to achieve the same thing in certain circumstances thus requiring a doubling up of procedure. This appears to be a particular interpretation that is not widely held and which we could not see the need for. The full set of options in both the Roads (Scotland) Act 1984 and the Road Traffic Regulation Act 1984 are available to local authorities to use as they see appropriate. However, in order to consider the issues fully we are seeking views in relation to the use of redetermination orders.

9. Are you content with the procedures regarding redetermination orders?

No

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

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

it is agreed that LAs should be able to deal with Redetermination Orders at a local level – this is strongly supported as the trigger threshold for of an objection for a public hearing is currently far too low. LAs have the necessary expertise and balanced view to be able to decide if the objection is material and valid / worthy of consideration, and then the means through open committee processes to explore and reach conclusion. Referral to Scottish Ministers is extremely time consuming and expensive as well as causing delays for all concerned.

More generally, the whole of the legislation relating to TROs (including redetermination orders) should be reviewed. It is now nearly 40 years old and seems unwieldy and difficult to use, both for roads authorities and members of the public/other stakeholders. The lack of clarity, with one local authority operating differently from the rest, illustrates this point.