

Net Zero, Energy and Transport Committee

10th Meeting, 2021 (session 6), Tuesday, 16
November 2021

Subordinate Legislation - The Traffic Regulation Orders
(Procedure) (Scotland) Amendment Regulations 2021
(SSI 2021/348)

Note by the Clerk

Overview of instrument

The following Scottish Statutory Instrument (SSI), subject to negative procedure, is being considered at today's meeting:

- [The Traffic Regulation Orders \(Procedure\)\(Scotland\) Amendment Regulations 2021 \(SSI 2021/348\)](#)

1. The instrument was laid before the Parliament on 1 October 2021 and comes into force on 26 November 2021.

Purpose of the instrument

2. These Regulations amend the Secretary of State's Traffic Orders (Procedure) (Scotland) Regulations 1987 and the Local Authorities' Traffic Orders (Procedure) (Scotland) Regulations 1999. They aim to simplify the procedure relating to making experimental traffic regulation orders under section 9 of the Road Traffic Regulation Act 1984 and to introduce a special procedure for making orders giving permanent effect to certain experimental orders
3. The Policy Note provides further detail on the instrument and is attached at **Annexe A**.

Delegated Powers and Law Reform Committee consideration

4. The Delegated Powers and Law Reform Committee considered this instrument at [its meeting on 26 October 2021](#). [Read the official report for the meeting on 26 October 2021](#).
5. The Committee determined that while it had no comments on the Regulations under its technical remit, it agreed to write to the lead committee to highlight

points for its consideration of the policy. The letter dated 4 November 2021 is attached in **Annexe B**.

Committee Consideration

6. The Committee is not required to report on negative instruments, but should it wish to do so, the deadline for reporting is 22 November 2021.

Procedure

7. Negative instruments are instruments that are “subject to annulment” by resolution of the Parliament for a period of 40 days after they are laid. This means they become law unless they are annulled by the Parliament. All negative instruments are considered by the Delegated Powers and Law Reform Committee (on various technical grounds) and by the relevant lead committee (on policy grounds).
8. Under Rule 10.4, any member (whether or not a member of the lead committee) may, within the 40-day period, lodge a motion for consideration by the lead committee recommending annulment of the instrument.
9. If the motion is agreed to by the lead committee, the Parliamentary Bureau must then lodge a motion to annul the instrument to be considered by the Parliament as a whole. If that motion is also agreed to, the Scottish Ministers must revoke the instrument.
10. If the Parliament resolves to annul an SSI then what has been done under authority of the instrument remains valid but it can have no further legal effect. Following a resolution to annul an SSI the Scottish Ministers (or other responsible authority) must revoke the SSI (make another SSI which removes the original SSI from the statute book.) Ministers are not prevented from making another instrument in the same terms and seeking to persuade the Parliament that the second instrument should not be annulled.
11. Each negative instrument appears on the Net Zero, Energy and Transport Committee’s agenda at the first opportunity after the Delegated Powers and Law Reform Committee has reported on it. This means that, if questions are asked or concerns raised, consideration of the instrument can usually be continued to a later meeting to allow the Committee to gather more information or to invite a Minister to give evidence on the instrument. Members should however note that, for scheduling reasons, it is not always possible to continue an instrument to the following week. For this reason, if any Member has significant concerns about a negative instrument, they are encouraged to make this known to the clerks in advance of the meeting.
12. In many cases, the Committee may be content simply to note the instrument and agree to make no recommendations on it.

Annexe A: Policy Note

The Traffic Regulation Orders (Procedure) (Miscellaneous Amendments) (Scotland) Regulations 2021 (SSI 2021/348)

The above instrument was made in exercise of powers conferred by section 124 and part III of schedule 9 of the Road Traffic Regulation Act 1984.
This instrument is subject to negative procedure.

Background and Policy Objectives

These Regulations amend the Local Authorities' Traffic Order (Procedure) (Scotland) Regulations 1999 and the Secretary of State's Traffic Regulation Orders (Procedure) (Scotland) Regulations 1987, both of which set out the procedures that traffic authorities must follow in relation to promoting and making ETROs.

Traffic authorities in Scotland already have powers to make ETROs under section 9 of the Road Traffic Regulation Act 1984 for the purpose of carrying out an experimental scheme of traffic control and these could have effect for up to 18 months. Local authorities however considered they offer little benefit as the procedure for such orders did not provide for a proper way to consult and modify along the way if required. This was backed up by the findings of a TRO Review Group, set up by the Scottish Government, which concluded that they were very rarely used in Scotland. Additionally, if a local authority considered there was suitable justification for the ETRO measures to become permanent, a further full TRO process needed to be undertaken which could potentially allow concerns already addressed to be made again by objection and could lead to a time consuming and costly Public Local Inquiry.

These Regulations will change the procedure relating to making ETROs and introduce a new procedure for making orders giving permanent effect to certain ETROs.

In particular, the amendments made by these Regulations remove the requirement for publication of a proposal to make an ETRO before making it together with the ability to make objections to the making of the order. Objections may be made to the making of an order to give permanent effect to an ETRO within the period of 6 months from the date on which the corresponding ETRO came into force. This allows objections to be dealt with while ETRO schemes are on the ground.

If the ETRO is to be made permanent, a new procedure for making such permanent order has also been created, dispensing with the requirement for consultation and objection period, provided that the relevant ETRO has been in force for at least 6 months, that it has not been modified more than 12 months after it was made and that all other applicable procedural requirements have been met in respect of it.

Consultation

In accordance with section 134(2) of the Road Traffic Regulation Act 1984, the Scottish Ministers have consulted relevant representative organisations. In particular, a TRO review group was established consisting of the Convention Of Scottish Local

Authorities (COSLA), Society of Chief Officers of Transportation in Scotland (SCOTS) and a number of traffic authorities and other interested parties to identify proposals to make the ETRO process more efficient and worthwhile in Scotland. Having listened to the findings and identified the main proposals a public consultation was held between the 4 June 2021 and the 30 July 2021 to which a total of 450 responses was received.

In relation to ETROs it was clear from the consultation responses that many individuals, organisations and local authorities were not content with the existing regulations, (71%).

What was less clear was whether there was agreement with our proposals to seek to make amendments to the procedure for making ETROs and TROs which give permanent effect to ETROs (56% disagreed, 43% agreed). The response to this question from local authorities was however almost unanimous with only one out of the 26 (out of 32 local authorities in Scotland) disagreeing. It was clear however that a number of the individual respondents (116 out of 318, 37%) were basing their answers on the recent Spaces for People projects put on the ground by the City of Edinburgh Council rather than the overall ETRO process. None of those projects were done under ETRO powers but Temporary Traffic Regulations Orders as an emergency response to Covid-19.

Having evaluated the findings of the public consultation and the representations made by the TRO review group the policy decision was taken to amend the procedures associated with ETROs and relevant permanent TROs.

Impact Assessments

A Business and Regulatory Impact Assessment (BRIA), Pre-Screening Report for Environmental Impact Assessment (SEIA), Pre Screening Report Island Communities Impact Assessment and partial Fairer Scotland Duty Impact Assessment have been completed.

Financial effects

This SSI will have no additional direct financial effect on the Scottish Government or local authorities as a result of the changes in the regulations.

Scottish Government, Roads Policy Team, Transport Scotland, 29
September 2021

Annexe B: letter from convener of Delegated Powers and Law Reform Committee to Convener of Net Zero, Energy and Transport Committee

4 November 2021

Dear Dean,

At its meeting on 26 October 2021, the Delegated Powers and Law Reform (DPLR) Committee considered the [Traffic Regulation Orders \(Procedure\) \(Miscellaneous Amendments\) \(Scotland\) Regulations 2021 \(SSI 2021/348\)](#). While the Committee had no comments on the SSI under its technical remit, it agreed to write to you as Convener of the Net Zero, Energy and Transport Committee in relation to your Committee's scrutiny of the policy implications of the Regulations.

For ease of reference, I include below the relevant extract from the [Official Report of the meeting on 26 October 2021](#):

The Convener: Do members have any comments on any of the instruments?

Graham Simpson: I have a comment on SSI 2021/348, which deals with something called experimental traffic regulation orders. I was a councillor for 10 years and I have never heard of those. I must admit that when I hear the words "experimental" and "orders" together, that concerns me, particularly where councils are involved.

The instrument seems to introduce a new way of bringing in traffic regulation orders—it is a truncated system. If orders are to be made permanent, a new system is being introduced. As members know, when any changes to roads are made, such as bringing in a cycle lane, they are often controversial and surely deserve the fullest scrutiny. The public should be able to comment within a decent timeframe.

Again, that is a policy matter, but it should be highlighted to the lead committee, which needs to take a good look at the issue and satisfy itself that the measures are appropriate. In this case, I think that the lead committee is the Net Zero, Energy and Transport Committee. Another letter from this committee is probably appropriate.

The Convener: I am content with the suggestion. It is the right thing to do. Clearly, you are correct that it is a policy matter. Are members content with that suggestion?

Members indicated agreement

I hope this is helpful.

Yours sincerely

Stuart McMillan MSP
Convener of the Delegated Powers and Law Reform Committee