

Transport and Environment Committee

10.00am, Thursday, 7 March 2024

Traffic Orders

Executive/routine
Wards

Routine
All

1. Recommendations

- 1.1 Transport and Environment Committee is asked to:
 - 1.1.1 Note the process changes being introduced to improve transparency of the traffic orders process;
 - 1.1.2 Note the options presented on how to progress with decision making on Traffic Orders in the future;
 - 1.1.3 Support the officer recommendation in paragraph 4.18 for the Committee Terms of Reference to be updated to transfer responsibility for statutory decisions on Traffic Orders to Transport and Environment Committee; and
 - 1.1.4 If recommendation 1.1.3 is agreed, request that the next report on Committee Terms of Reference presented to the Council reflects the request for the Committee remit be updated.

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Traffic Orders

2. Executive Summary

- 2.1 This report responds to the action agreed by Committee in November 2023 requesting options to allow Transport and Environment Committee to continue to be involved and take a view on key transport changes being delivered through statutory order processes.

3. Background

- 3.1 Following a review of political management arrangements, the Council agreed to transfer the statutory element of Traffic Regulation Orders (TROs), and other similar Orders, to Regulatory Committee (and the Licensing Sub-Committee of Regulatory Committee). The change recognised that Orders are quasi-judicial (Licensing Sub-Committee deals with other quasi-judicial matters) and the volume of business within the remit of Transport and Environment Committee.
- 3.2 The change came into effect after the Easter recess 2023. Since then, a total of four TRO reports have been considered by Licensing Sub-Committee, with a further three planned between now and June 2024.
- 3.3 On 16 November 2023, Committee received a [Business Bulletin](#) update on Traffic Orders – Licensing Sub-Committee. Committee noted the Business Bulletin update and:
- 3.3.1 Recognised that the application of the agreed change in committee remits could result in practical anomalies whereby Transport and Environment Committee agrees to initiate an order process because of an agreed policy aim, but then has no role to review or pass judgement on the success of the process in delivering the policy outcome;
 - 3.3.2 Given the number of high-profile order processes on-going, that it was not appropriate to leave the initiation of a review until June 2024; and
 - 3.3.3 Therefore, asked that this be reviewed within an earlier timescale and that options be brought forward in three cycles that would continue to respect the role of Licensing Sub-Committee in taking quasi-judicial decisions but allow

Transport and Environment Committee to continue to be involved and take a view on key transport changes being delivered through statutory order processes.

Traffic Regulation Orders (TROs) and other Orders

- 3.4 A TRO is a legal document that makes provisions “prohibiting, restricting or regulating the use of a road, or of any part of the width of a road”. An order can be applied to any class of vehicle or pedestrians.
- 3.5 The legal basis for TROs comes from the Road Traffic Regulation Act 1984 (RTRA), with the requirements in terms of processing set out in the Local Authorities’ Traffic Orders (Procedure) (Scotland) Regulations 1999.
 - 3.5.1 TROs:
 - 3.5.2 Introduce restrictions, allowing them to be enforced;
 - 3.5.3 Support local and national policies; and
 - 3.5.4 Supports local authorities in meeting their duties under the RTRA, and in particular to secure the expeditious, convenient and safe movement of vehicular and other traffic (including pedestrians) and the provision of adequate parking facilities on and off the road.
- 3.6 The Council must promote appropriate traffic orders to:
 - 3.6.1 Introduce new measures;
 - 3.6.2 Amend existing measures;
 - 3.6.3 Remove existing measures.
- 3.7 Other types of Order promoted by the Council include those to either “Stop Up” part of the road, or to redetermine how the road can be used. The legal basis for these Orders comes from the Roads (Scotland) Act 1984 (Roads Scotland Orders, or RSO) and, in the case of certain Orders necessitated following a Planning decision, from the Town and Country Planning (Scotland) Act 1997 (Planning Orders, PO).
- 3.8 There are, therefore, four broad types of order which may be reported to Committee:
 - 3.8.1 Traffic Regulation Order (TRO);
 - 3.8.2 Experimental Traffic Regulation Order (ETRO);
 - 3.8.3 Redetermination Order (RSO); and
 - 3.8.4 Stopping Up Order (either RSO or PO).

Scheme of Delegation to officers

- 3.9 The Scheme of Delegation to officers makes provision for officers to commence and complete the statutory procedure, including all the necessary preparation prior to making orders under the Road Traffic Regulation Act 1984.

- 3.10 The Scheme also makes provision for officers to make orders where there have been no more than six objections received from the public. Where an order covers locations in different streets, or contains no other proposals located within 100 metres in the same street, the order can be made under delegated powers where there have been no more than six objections per location.
- 3.11 Objections received from a Statutory consultee must be considered by the relevant Committee.
- 3.12 Where an objection is received, and not subsequently withdrawn, on a proposed RSO or PO, those must be referred to Scottish Ministers for determination. In certain circumstances objections to TROs or ETROs may also necessitate such referral or the holding of a public hearing.

4. Main report

Committee remits

- 4.1 The remit of Transport and Environment Committee includes the development and approval of policies, strategies, programmes and projects and to work with officers, communities and partners to implement them. This includes traffic management, roads and parking.
- 4.2 The remit of Regulatory Committee, and the Licensing Sub-Committee of Regulatory Committee, includes the responsibility to exercise the statutory element of Traffic Regulation Orders.

Options for Transport and Environment Committee to retain oversight of Traffic Orders

- 4.3 As noted in paragraph 3.3.3, the decision of Committee in November was to explore options to respect the role of Licensing Sub-Committee while ensuring that Transport and Environment Committee continues to be involved and can take a view on key transport changes being delivered through statutory order processes.
- 4.4 There are two options available to address the issues raised:
- 4.4.1 Option 1 – to retain responsibility for the statutory element of determining Traffic Orders with Regulatory Committee and Licensing Sub-Committee, with increased oversight through Transport and Environment Committee; or
- 4.4.2 Option 2 – to amend the Committee Terms of Reference by transferring the remit for the statutory element of Traffic Orders to Transport and Environment Committee.

Oversight by Transport and Environment Committee

- 4.5 At present, in all but schemes which will have a significant local or citywide impact, or which have significant local interest, the decision to commence and complete the statutory procedure for traffic orders is delegated to officers.

- 4.6 To begin this process, a report is prepared for the Executive Director which outlines the reason for commencing the order process and the objectives which are expected to be achieved once the order is in place.
- 4.7 A monthly summary of traffic orders at various stages of the statutory process could be provided to Transport and Environment Committee within the Business Bulletin. This information could also be published on the Council website.
- 4.8 The summary of orders would include the purpose of the order, how the order fits with the Council's objectives, any other relevant details for the order and details of when the order was approved to proceed through the statutory process.
- 4.9 The summary would be updated once the statutory consultation is underway, when the order is advertised and then to confirm if any objections have been received and the next steps.
- 4.10 Orders which will have a significant local or citywide impact, or which have significant local interest, will continue to be reported to Transport and Environment Committee for approval to proceed with the statutory process. The outcome of the statutory process and then the decision of Licensing Sub-Committee would be reported back to Committee through the Business Bulletin.

Quasi-Judicial Matters at Transport and Environment Committee

- 4.11 Alternatively, the Council could agree to transfer responsibility for determining the outcome of the statutory orders process (where more than six objections are received) to Transport and Environment Committee and update the Committee Terms of Reference accordingly.
- 4.12 This has the benefit of retaining all oversight for traffic orders with a single committee.
- 4.13 However, one of the reasons for transferring responsibility to Regulatory Committee (and Licensing Sub-Committee) was in recognition of the quasi-judicial nature of the decision required and that, when participating in decisions on such, Councillors should apply Section 7 of the Councillors Code of Conduct and ensure a proper and fair hearing and to avoid any impression of bias in relation to statutory decision making processes.
- 4.14 As with Planning and Regulatory Committee, it may be possible to create a sub-Committee of Transport and Environment Committee to deal with quasi-judicial matters. A regular schedule of meetings would be required in the Council diary, however, not all meetings would be required as traffic orders are generally not submitted on a regular schedule.

Other Considerations

- 4.15 Irrespective of the preferred option, it is proposed to improve the internal processes for starting, progressing and making traffic orders, to increase transparency of decision making and consistency across service areas.

- 4.16 The move to using an updated map-based order system will also improve the information available on traffic orders going through the statutory process and it is anticipated that this new system will help to improve the timescales for progressing statutory processes.
- 4.17 The Council may also wish to review the existing Scheme of Delegation in respect of the number of objections which need to be reported to Committee. Informal discussions will take place with political groups on this, with the outcome being reported back to Committee and, if appropriate, to the Council.

Officer Recommendation

- 4.18 On the basis of the information above, and considering feedback from Elected Members, officers recommend that Committee support a change to the Council's Committee Terms of Reference to transfer responsibility for the statutory decisions on TROs to Transport and Environment Committee, with an associated sub-committee being established.

5. Next Steps

- 5.1 Committee is asked to note the improvements which officers will put in place for managing the Committee process for traffic orders.
- 5.2 If Committee support the recommendations in this report, this will be reported to the Council in the next update on Committee Terms of Reference for a decision.
- 5.3 If Committee support the recommendations of this report, and the Council subsequently agrees that the remit for Traffic Orders should transfer to Transport and Environment Committee, training will be provided to Committee members and will also be offered to Political Groups (to ensure that Elected Members asked to substitute for a Committee member for Traffic Order decisions has received appropriate training).
- 5.4 As noted in paragraph 4.13, Section 7 of the Councillors' Code of Conduct would apply. Training will also be provided on how this applies where Elected Members have expressed a view on orders which are currently being progressed and on how to apply the Code of Conduct in future. Officers will also be available to provide advice to individual Councillors if required.

6. Financial impact

- 6.1 There are no financial impacts arising from this report. The cost of the traffic orders process, including reporting to Committee, is built into the Council's budget on an annual basis, with costs generally being met from project budgets.

7. Equality and Poverty Impact

- 7.1 There are no direct equality or poverty impacts arising from this report. However, improvement in the Council's processes for commencing, advertising and concluding statutory order processes will ensure greater transparency of decision making. Publishing this information within the Committee Business Bulletin and on the Council website will make this information more accessible to the public.

8. Climate and Nature Emergency Implications

- 8.1 As a public body, the Council has statutory duties relating to climate emissions and biodiversity. The Council

“must, in exercising its functions, act in the way best calculated to contribute to the delivery of emissions reduction targets”

(Climate Change (Emissions Reductions Targets) (Scotland) Act 2019), and

“in exercising any functions, to further the conservation of biodiversity so far as it is consistent with the proper exercise of those functions”

(Nature Conservation (Scotland) Act 2004)

- 8.2 The City of Edinburgh Council declared a Climate Emergency in 2019 and committed to work towards a target of net zero emissions by 2030 for both city and corporate emissions and embedded this as a core priority of the Council Business Plan 2023-27. The Council also declared a Nature Emergency in 2023.

Environmental Impacts

- 8.3 There are no environmental impacts arising from the options set out in this report.

9. Risk, policy, compliance, governance and community impact

- 9.1 This report has been prepared in response to a request from Committee. However, the recommendations of improvements to how traffic orders are progressed within the Council take account of feedback from colleagues, from partners and from Elected Members.
- 9.2 As noted above, the changes proposed to the processes for progressing traffic orders will improve transparency and will enable the public and Elected Members to have greater oversight of the orders being progressed by the Council.

10. Background reading/external references

- 10.1 None.

11. Appendices

11.1 None.