

Title of meeting: Traffic and Transportation Decision meeting

Date of meeting: 28 July 2022

Subject: Portsmouth Rental E-Scooter Trial Traffic Regulation Order

Report by: Tristan Samuels - Director of Regeneration

Wards affected: All

Key decision: No

Full Council decision: No

1. Purpose of report

This report considers responses to the Experimental Traffic Regulation Order (ETRO) in operation since 16 March 2021 for Portsmouth's rental e-scooter trial, and the next steps after the ETRO expiry on 15 September 2022.

2. Recommendations

It is recommended that the Cabinet Member for Traffic and Transportation:

- 2.1 Notes that in accordance with Department for Transport's guidance, Portsmouth implemented an ETRO ("ETRO 25 2021") when it launched its rental e-scooter trial in March 2021 to allow rental e-scooters in cycle tracks, cycle lanes and bus lanes;**
- 2.2 Notes the decision on 18 March 2022, at a meeting of the Cabinet Member for Traffic & Transportation, that the trial should continue until 30 November 2022;**
- 2.3 Notes that ETROs can only remain in place for up to 18 months, and that Portsmouth's ETRO is therefore scheduled to expire on 15 September 2022;**
- 2.4 Notes the responses received to the ETRO during the six-month consultation period from March to September 2021;**



2.5 Approves converting the ETRO to a permanent TRO from 15 September 2022;

2.6 Notes that a decision to make the ETRO permanent would in no way constitute a decision to permit an e-scooter operation in any form after November 2022, and that a further Cabinet Member decision would be required to enable this and to extend the enabling Vehicle Special Order (VSO) beyond 30 November 2022.

3. Background

3.1 As part of the government's response to COVID-19, and to support a 'green' restart of local travel to help mitigate reduced capacity on public transport, the Department for Transport (DfT) fast-tracked and expanded trials of rental e-scooters. The DfT considered that e-scooters offered the potential for fast, clean and inexpensive travel which could ease the burden on transport networks and allow for social distancing.

3.2 The trials enable essential insights for the DfT and councils as to how rental e-scooters contribute to the transport mix in urban centres. Following the trials, it was anticipated that the DfT would assess whether these vehicles should be legalised in the UK as part of their Future Transport Regulatory Review.

3.3 During the trials, e-scooters are classified as motor vehicles, and the relevant motor vehicle insurance has to be provided via the scheme operator. E-scooters must meet requirements for vehicle construction and approval set by the DfT.

3.4 The DfT is only permitting the trialling of rental e-scooters. The use of privately owned e-scooters on the public highway remains illegal during the trial period.

3.5 The DfT had originally planned that all trial schemes would end by 31 March 2022, but subsequently invited trial areas to extend them to November 2022.

3.6 On 12 May 2022, the DfT sent an email to all authorities and operators running e-scooter trials, outlining its plans beyond November 2022. The email is included with this report as Appendix A, but an abridged version is as follows:

"The Queen's Speech on Tuesday 10 May 2022 announced the Government's intention to introduce legislation on the future of transport in the parliamentary session as part of a Transport Bill.

In brief, we are now able to confirm that the Government intends to create a new, low-speed, zero-emission vehicle (LZEV) category which is independent from the cycle and motor vehicle categories, covering both new vehicles that are

familiar to us today, such as e-scooters, and vehicles that have yet to be invented.

New powers, to be set out in the Transport Bill, would allow the Government to decide which vehicles fall into this category in future and establish how they should be regulated to make sure that they are safe for users, pedestrians, and other road users, while still facilitating growth and innovation.

We anticipate using the powers within the Bill to subsequently create regulations that will legalise e-scooters, but under new rules. These rules would include robust technical requirements and, most likely, a set of requirements for users.

The Bill will also propose new powers for local transport authorities to shape and manage rental operations, for pedal cycles, e-cycles, and e-scooters. The details of this scheme would again be set out in subsequent regulations.

We will consult publicly before any secondary regulations for e-scooters and the rental schemes are made. In the meantime, the current regulations for e-scooters still apply, and importantly private e-scooters remain illegal to use on public roads. This week's announcement does not mean a change to our rental trials. The trials will continue to run until 30 November 2022. No decision has been made about what will happen to trials after that date."

- 3.7 On 28 June 2022, the DfT sent a further email to all authorities and operators running e-scooter trials, indicating that Ministers had approved an 18-month extension of the current e-scooter trials to 31 May 2024 for existing trial areas that wished to continue. The email is included with this report as Appendix B, but an abridged version is as follows:

"Ministers have approved an 18-month extension of the current e-scooter trials to 31 May 2024. The extension will be restricted to existing trial areas only and will allow us to gather further evidence where gaps are identified, building on the findings of the current evaluation.

The Queen's Speech in May this year announced the Government's intention to introduce legislation on the future of transport in the new parliamentary session as part of a Transport Bill. We anticipate using powers to create a new independent low-speed, zero emission vehicle (LZEV) category, and to subsequently create regulations that will legalise e-scooters under new rules, as well as proposing new powers for local transport authorities to manage rental operations for pedal cycles, e-cycles and e-scooters through a rental permit scheme. We will continue to engage with you while legislation is being developed and will also consult publicly before any secondary regulations for e-scooters and the rental schemes are made.

The move towards a new regime means that the trials continue to have significant value, as well as providing a practical example of how better regulation can encourage responsible use. We continue to gather trip data and monthly incident reports to inform policy development. We are also keen to use the extension to allow local authorities to share lessons learned, amongst themselves and with non-trial areas, in preparation for the introduction of rental permit schemes under the new legal framework. This will be facilitated by the Department and we will be in touch shortly with further details.

Existing VSOs will continue to run until 30 November 2022. Local authorities can choose to withdraw from the trials or continue with an extension to 31 May 2024. As with previous extensions, we hope that all areas will want to continue, but there is no compulsion. The deadline for local authorities to let us know their decisions will be 31 October 2022."

4. ETRO consultation responses

- 4.1 One objection was received to the ETRO during the six-month consultation period. This was made at the outset of the trial, on 29 March 2021, by the Road Traffic Enforcement Advisor/Traffic Management Officer for Hampshire and Isle of Wight Constabulary & Thames Valley Police Joint Operations Unit. An initial question was raised as to whether Hampshire Constabulary had been properly notified, but it was confirmed the ETRO was emailed to traffic.management@hampshire.pnn.police.uk, which is the council's standard police contact email address for statutory traffic consultations. The substantive reasons stated for the objection were as follows:

"The ETRO accepts the definition of a 'Cycle Track' in the Highways Act 1980... [Hampshire Constabulary] have received no evidence that the pavements in the Portsmouth area have been formally designated as 'Cycle Tracks'. If the pavements are not cycle tracks (signing is not sufficient as signs are only permitted to be erected to give effect to a formal designation) then they cannot be re-designated as cycle lanes."

"The local authority do not have the authority to change primary legislation using a local Order. Article 7 attempts to change the definition of a cycle track (defined in the Highways Act) to that of a Cycle Lane (as defined in TSRGD 2016). It is clear that this not legally possible for two reasons, firstly that in all our discussions with Department for Transport (DfT) this simple solution has never been suggested and secondly because DfT has provided the only legal solution in The Traffic Signs (coronavirus)(Amendment)(England) Regulations 2021 (2021 No.75). In their consultation document on this Statutory Instrument DfT state, "An amendment for the definition for a 'cycle lane' is also proposed... and widens the definition to lanes separated by a barrier (instead of a painted road marking). This applies to a way that would be a cycle track, which is adjacent to

the carriageway". Of course the pavement must be legally and correctly made into cycle track in the first place."

"Article 8 of the ETRO has the phrase: The requirements, prohibitions and restrictions imposed by this Order shall be in addition to and not in derogation from any requirement, prohibition or restriction imposed by any regulations made or having effect as if made under the 1984 Act, or by any other enactment. 'Derogation' means an exemption from or relaxation of a rule or law so the ETRO is saying in the body of the Order that it is altering definitions found in other legislation including the local Orders listed in Schedule 1 and then saying in article 8 that it doesn't."

"This objection is not just on the technicalities of the legal documents. By permitting the use of 'Cycle Tracks' the Council is not only condoning their unlawful use (if indeed the pavements have been legally designated as cycle tracks) but are liable under the 'use, cause, permit' Road Traffic Act offences and manslaughter liabilities."

- 4.2 These grounds for objection were duly considered by the council's Public Highways and Housing Lawyer (and subsequently, by the Future Transport Zone Board), and the council's position on these points is as follows:

Regarding the issue of cycle tracks, there are few designated cycle tracks in Portsmouth. Where the route runs along shared-use pavement, it will fall within the definition of cycle lane as it runs alongside a carriageway. The ETRO does not seek to create any new cycle tracks or cycle lanes within Portsmouth, but simply to change existing orders where otherwise use permitted under the VSO would be prevented, such as bus lanes or Guildhall Square.

If a physical barrier has to be erected to bring a shared-use pavement within the definition of a cycle lane, that is not a matter for the ETRO. It is question of installing the infrastructure. Similarly with the installation of necessary signage.

The ETRO does not authorise the use of e-scooters in the city other than insofar as it removes the restrictions contained in the specified orders. The VSO authorises the use on roads within the city. If part of the route runs along an undesignated cycle track that does not fall within the definition of a road, then it must be on private land. The use of e-scooters on private land with the landowner's permission is not unlawful.

Regarding article 8, this is standard wording and if it is not in derogation then it is not seeking to alter primary legislation. The objection seems to be mainly with regards to article 7 and a perceived attempt to alter primary legislation. If the wording in the consultation document is to be applied, there is no longer the same distinction between cycle lanes and cycle tracks. The amendment in the

2021 regulations only applies in those areas taking part in a trial and is only intended to be temporary. The changes in legislation only apply by the installation of either markings or a barrier, but otherwise the changes are not apparent. Article 7 is consistent with the changes made by the 2021 regulations and is intended as much for information purposes as anything. In any event, this clause could be easily removed without affecting the main part of the order.

If there is an issue with whether the use of e-scooters in certain parts of the city is unlawful, this is not reason to object to the ETRO. The ETRO is not intended to specifically authorise the use of e-scooters. There are not many cycle tracks in its truest definition in Portsmouth. The issue of what constitutes a cycle track is more to do with the issue of lawful use than the validity of the ETRO. Without detailed maps of all possible routes, it is not possible to say whether they use undesignated cycle tracks, but if they are not shown on the definitive map or on adopted highway, the use of e-scooters will not be authorised under the VSO and may be liable to prosecution if the landowner does not give their permission.

5. Reasons for recommendations

- 5.1 As summarised in the March 2022 Decision Report to extend the trial, the performance of Portsmouth's e-scooter trial to date has been encouraging, especially as regards mode shift, with the most recent council survey indicating 60% of e-scooter journeys would otherwise have been made by car and taxi.
- 5.2 Since the decision was taken in March 2022 to extend the trial until November 2022, performance metrics have continued to trend in the right direction, with ridership increasing, fleet tidiness over 90%, and no serious injuries reported.
- 5.3 The reasons to extend the trial that were stated in the March 2022 report all remain valid, notably:
- It will provide more data and help ensure fluctuations caused by weather, major events, availability in residential areas, and returning users are as fully accounted for as is possible during the trial period
 - It will allow further evidence collection during a period of reopening following the COVID-19 lockdowns, which is more representative of how people are likely to travel around the city in the future.
 - Ending the trial in March 2022 could slow progress towards micromobility achieving its true potential in Portsmouth, as it would remove the opportunity to continue refining the service, including its integration with bikeshare and MaaS, while the DfT continues to evaluate the trials and establish the best legal framework for legalising e-scooters in future.
 - Extending the trial would facilitate the ongoing independent data validation commissioned by Solent Transport, which would improve the

evidence base and help inform subsequent decisions to be taken about e-scooters at the local and national levels.

- 5.4 While the primary reason to make the ETRO permanent is to cover the period between its expiry on 15 September 2022 and the trial's scheduled end date of 30 November 2022, this recommendation provides the council with the greatest flexibility to implement the best option for Portsmouth's residents and visitors after November 2022.
- 5.5 As stated above, following careful consideration of the objection received in March 2021, none of the grounds for objection were deemed sufficient to bring the validity of the ETRO into question. Portsmouth City Council has adhered to national government guidance provided by the DfT throughout the trial period to ensure its e-scooter rental scheme has complied with all relevant legislation.
- 5.6 Following discussions with transport officers and legal representatives from across the Solent Transport area, and having contacted other trial areas (e.g. Buckinghamshire, Slough, and Kent) that have recently converted their ETROs to permanent orders, the most suitable approach to continue Portsmouth's trial beyond November 2022 from a legal perspective is the conversion of the ETRO to a permanent traffic regulation order (TRO), in accordance with The Local Authorities' Traffic Orders (Procedure) (England and Wales) Regulations 1996.

6. Integrated impact assessment and Equality Impact Assessment

- 6.1 An Integrated Impact Assessment (IIA) and an Equality Impact Assessment (EIA) were carried out at the trial's commencement and updated versions of both documents are included with this report as Appendix C and D respectively.

7. Legal implications

- 7.1 An experimental order is similar to a permanent traffic regulation order in that it is a legal document which imposes traffic and parking restrictions such as road closures, one-way streets, banned turns, bus/cycle lanes, controlled parking, and on-street parking places. Such Orders are made under Sections 9 and 10 of the Road Traffic Regulation Act 1984 and all other enabling powers after consultation with the chief officer of police in accordance with Schedule 9 to the 1984 Act.
- 7.2 Unlike a permanent order, an experimental order can stay in force for a maximum of 18 months while its effects are monitored and the Council decides whether or not to make the provisions permanent. There is no public consultation before the experimental traffic order is brought into effect, but from its commencement date, there is a 6-month period that allows representations to be submitted based on experience of the traffic scheme in operation.
- 7.3 Provided the sole effect of the order is to reproduce and continue in force indefinitely the provisions of an ETRO without modification, an experimental order can be made permanent providing the following requirements are adhered to.

The following statements were included in the notice of making the experimental order:

- that the order making authority will be considering in due course whether the provisions of the experimental order should be continued in force indefinitely
- A person may object to the experimental order continuing for an indefinite period within 6 months of the order beginning on the date the order came into force (or within 6 months beginning on date the order is varied or modified)
- That any objections must be in writing, state the grounds on which it is made and be sent to an address specified in the notice

- 7.4 The following documents were deposited and kept available for inspection beginning from the date on which the advertisement of the experimental order is first published and ending on the date the order ceases to have effect:



- a) a copy of the relevant notice of proposals and, if the order has been made, of the relevant notice of making;
- b) a copy of the order as proposed to be made or as made (as the case may be);
- c) a map which clearly shows the location and effect of the order as proposed to be made or as made (as the case may be) and, where appropriate, alternative routes for diverted traffic;
- d) a statement setting out the reasons why the authority proposed to make the order including, in the case of an experimental order, the reasons for proceeding by way of experiment and a statement as to whether the authority intends to consider making an order having the same effect which is not an experimental order;
- e) if the order varies, revokes, applies or suspends another order, a copy of that other order;
- f) if the order has been made after the holding of a public inquiry, a copy of the report and recommendations (if any) of the inspector; and
- g) where the experimental order has been modified in accordance with section 10(2) RTRA a statement of the effect of each such modification

7.5 If objections are received to an ETRO during the 6 month consultation period, the matter must go before the appropriate executive member for a decision whether or not to make the order, taking into account the comments received from the public during the consultation period.

7.6 If it is decided to make the order permanent any person who objected to the ETRO within the six month period should be notified in writing within 14 days of the making of the order and given reasons for the decision.

8. Director of Finance's comments

8.1 Project costs associated with the development and running of the E-Scooter rental trial project will continue to be met by Solent Transport, in accordance with the funding allocated to the trial as part of the FTZ programme. The conversion of the ETRO to a permanent order, if approved, will not have any financial implications for the council.

8.2 There will be no cost for the conversion of the ETRO to a permanent order.

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Signed by: Tristan Samuels, Director of Regeneration

Appendices:

Appendix A	DfT email, 12 May 2022
Appendix B	DfT email, 28 June 2022
Appendix C	Integrated Impact Assessment (IIA)
Appendix D	Equality Impact Assessment (EIA)

Background list of documents: Section 100D of the Local Government Act 1972

The following documents disclose facts or matters, which have been relied upon to a material extent by the author in preparing this report:

Title of Document	Location
Government guidance on e- scooter trials	https://www.gov.uk/guidance/e-scooter-trials-guidance-for-users
Portsmouth City Council e- scooter webpage	Rental e-scooter trial - Travel Portsmouth
Electric Scooter Trials & Traffic Signs (Coronavirus) Regulations & General Directions 2020	The Electric Scooter Trials and Traffic Signs (Coronavirus) Regulations and General Directions 2020 (legislation.gov.uk)
Portsmouth E-Scooter Rental Trial Traffic & Transportation Committee Report (September 2020)	https://democracy.portsmouth.gov.uk/documents/s28007/Portsmouth Rental E-scooter Trial.pdf
Portsmouth E-Scooter Rental Trial Traffic & Transportation Committee Report (February 2021)	Agenda for Cabinet Member for Traffic & Transportation on Thursday, 25th February, 2021, 4.00 pm Portsmouth City Council
Portsmouth E-Scooter Rental Trial Traffic & Transportation Committee Report (November 2021)	Agenda for Cabinet Member for Traffic & Transportation on Thursday, 4th November, 2021, 4.00 pm Portsmouth City Council
Portsmouth E-Scooter Rental Trial Traffic & Transportation Committee Report (March 2022)	Agenda for Cabinet Member for Traffic & Transportation on Friday, 18th March, 2022, 4.00 pm Portsmouth City Council

The recommendation(s) set out above were approved/ approved as amended/ deferred/ rejected by on

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Signed by: