

# Final Business and Regulatory Impact Assessment

**Title of Proposal**

The Motor Sport on Public Roads (Scotland) Regulations 2019 (“the Regulations”)

**Purpose and intended effect****Background**

Currently it is a criminal offence to promote or take part in a race or trial of speed on public roads in Scotland. The only exceptions to this currently in Scotland are events authorised under the Scottish Borders Council (Jim Clark Memorial Rally) Order Confirmation Act 1996 and the Strathclyde Regional Council Order Confirmation Act 1990. Both these private acts made at Westminster authorise and allow, respectively, the Jim Clark Rally and the Isle of Mull Rally. Other motor vehicle competitions such as navigational rallies and treasure hunts are permitted on public roads, subject to an authorisation procedure. Racing is permitted off the public road subject to a similar authorisation process.

The Regulations introduce a two stage authorisation process to allow motorsports to be held on closed roads in Scotland. This places the relevant motorsports governing bodies (i.e. Motorsports UK and Scottish Auto-Cycle Union) with the skills and experience of authorising and running events are at the heart of the application and authorisation process.

The Regulations allow authorities to authorise motorsports events jointly with the relevant motor sport governing body, potentially unlocking benefits at a local level, by issuing a motor sport order.

While local authorities do have the powers to authorise a temporary road closure for sporting and leisure events on public roads under the Road Traffic Regulations Act 1984 (RTRA), those powers do not currently extend to road closures for motor vehicle races or trials of speed. The Regulations amend the RTRA so that they may now do so. Further, where local road authorities have authorised an event via the issuing of a motorsports order, the Regulations will operate to suspend a prescribed list of road traffic regulations, such as speed limits, for those participating in or officiating at the authorised event.

The Jim Clark and Mull rallies have not been held on closed public roads in recent years due to ongoing issues faced by the event organisers with obtaining insurance cover following two tragic incidents, that resulted in one fatality at the Snowman Rally in 2013 and three fatalities at the Jim Clark Rally in 2014. Under the Road Traffic Act 1988 event organisers are liable in damages for personal injury or damage to property unless it is proved that they took reasonable steps to prevent the injury or damage occurring.

**Objective**

Creating a more successful country is a key pillar of the Scottish Government’s efforts to promoting a wealthier and fairer place to live. The Scottish Government recognises the important contribution motorsport events can bring to local economies. This is indicated within the Scottish Government’s National Performance Framework:

- Participation in a cultural activity (National Indicator)

- Growth in cultural economy (National Outcome)
- We are creative and our vibrant and diverse cultures expressed and enjoyed widely.

Following the tragic fatalities, Scottish Ministers announced in June 2014 that a Motorsport Event Safety Review Group would examine safety, and specifically spectator safety, at motorsport events in Scotland and make recommendations to improve safety for future events. The review recognised that there is an inherent risk in taking part in or attending motorsport events and it sought to recommend reasonable and proportionate measures that would manage and minimise the risks to spectators.

In December 2016 the Crown Office and Procurator Fiscal Services (COPFS) announced that a single Fatal Accident Inquiry (FAI) would take place into the fatalities at both the Snowman and Jim Clark Rallies. The FAI determination was published in November 2017. Both the findings of the review and the FAI have been taken on board by Motorsport UK resulting in much stricter guidance and awareness related to spectator safety.

### **Rationale for Government intervention**

Scotland has a long and proud tradition in the world of motorsports and the Scottish Government recognises the need to balance the potential for economic benefit and public enjoyment from such events with a high degree of safety, both for spectators and road users.

The Scottish Government also wishes to see those who have the best understanding of the sport enabled to assess all aspects of these events. It also values the benefits of decisions regarding these events being taken at a local level therefore empowering communities to hold events for the local areas benefit.

### **Consultation**

#### **Within government**

Discussions have been on-going with colleagues across Scottish and UK Governments in developing the Regulations, including but not restricting, the following directorates and departments:

- Active Scotland,
- Scottish Government Legal Directorate
- Department for Transport.

#### **Public consultation**

An eight week national public consultation by the Scottish Government ran from 3rd December 2018 to the 28th January 2019.

<https://www.transport.gov.scot/consultation/consultation-on-motorsports-on-closed-public-roads/>

We received a total of 3,788 responses, which included responses from seven local authorities and Mull Community Council. The consultation also received responses from representatives with a knowledge about motorsports, including:

- Sportscotland
- Motorsport UK
- Scottish Association of Motor Sports Clubs
- British Motorsports Marshal Club
- RSAC Motorsport Limited

The analysis report was published on 25 February and can be seen at:

<http://www.transport.gov.scot/consultation/>

In the main, the consultation focused on the current arrangements for allowing motorsports on closed roads and the proposal to introduce a two stage application process to allow events to be held on closed public roads. Respondents clearly supported (99% in favour) the proposals for Local Road Authorities to be given powers to close public roads for motorsport events in line with the current powers they already have for other type of events.

### **Working Groups**

In order to gather expert views from the field of motorsports, Transport Scotland formed the Motorsports on Closed Public Roads advisory group consisting of key stakeholders such as:

- Police Scotland
- The Society of Chief Officers of Transportation in Scotland (SCOTS)
- The Convention of Scottish Local Authorities (COSLA)
- The Jim Clark Rally Organisers
- The Isle of Mull Rally Organisers
- Motorsport UK
- The Scottish Motorsports Association
- The Scottish Borders Council
- Active Scotland
- Transport Scotland Road Policy Officials

The group met on two separate occasions in June 2018 and October 2018 to discuss the format of the public consultation and the issues surrounding the insurance of such events and the impact to event organisers. In addition to the working group meetings there has been ongoing liaison with stakeholders.

### **Direct Engagement**

In addition to the working group meetings, we have had one-to-one meetings with Motorsport UK and discussions with the Jim Clark and Mull rally organisers.

### **Options**

**Option 1** – Do nothing.

**Option 2** – Amend existing legislation, and

**Option 3** – Enact new legislation.

### **Sectors and groups affected**

All of the options have impacts for the following sectors and groups:

- Local Authorities
- The Scottish Government
- Businesses
- Individuals, motorists and motorsports organisations

### **Option 1 – Do Nothing**

#### **Benefits**

This option would mean that the only local authorities who would have to consider authorising motorsports events on closed public roads are those with powers under existing legislation. This would mean the Scottish Borders Council, in respect of the Jim Clark Rally, and Argyle and Bute Council, in respect of the Isle of Mull Rally. These are the only two events which are the subject of current private acts of the Westminster Parliament, namely the Scottish Borders Council (Jim Clark Memorial Rally) Order Confirmation Act 1996 and the Strathclyde Regional Council Order Confirmation Act 1990. This however is largely irrelevant as event organisers are now unable to arrange insurance cover for their events under both of these pieces of legislation, which effectively means the events cannot be run.

Businesses would not suffer any costs associated with roads being closed to host motorsport events. Adversely, businesses would not see any of the substantial benefits associated with an increase in tourism in areas as a result of motorsport events being held.

The Scottish Government aims to build a wealthier and fairer Scotland and this features as one of its five key strategic objectives. The engagement with local government, businesses and other stakeholders has shown a very high level of support for the principles of this policy as did the public consultation which gathered over 3,700 responses. The 'do nothing' option therefore fails to deliver on this strategic objective.

#### **Costs**

There would be no additional costs to local authorities as there would be no new events subject to a motorsports order for authorities to consider, outside of the two existing events as noted above.

There would be no additional costs to businesses as no new events would be brought forward under the 'do nothing' option. This in turn, would impact the local economy as no visitors would travel to the area.

In addition there would be no cost to the Scottish Government as there would be no growth in the number of events. Both of the events already subject to private legislation would continue to be assessed as per previous years, however as noted above, due to insurance issues these events would likely be unable to continue.

### **Option 2 – Amend existing legislation**

#### **Benefits**

This option considers the possibility of amending the existing two pieces of legislation which currently permit motorsports events on closed public roads in Scotland, namely the

Scottish Borders Council (Jim Clark Memorial Rally) Order Confirmation Act 1996 and the Strathclyde Regional Council Order Confirmation Act 1990.

Both of these acts are primary pieces of legislation enacted in the UK Parliament and as such, would require a new Act of Parliament to alter or extend any of the wording. Any new events would also need a new Act.

It is considered somewhat cumbersome to have to enact a new Act of Parliament for any new motorsports events that may be considered for a motorsports permit and motorsports order in the future. Such previous Private Acts of Parliament have in the past taken anything from 20 months to 8 years to be enacted.

### **Costs**

Specific costs to Option 2 have not been quantified, however any new Act would have a cost impact on the Scottish Government given the considerable amount of time and resource that it would take to put each Act in place.

### **Option 3 – New Legislation**

#### **Benefits**

New legislation allows for the potential to promote a Wealthier and Fairer Scotland and help promote events which have a track record of bringing benefits to the local communities who play host to such event. The above engagement and public consultation has revealed a significant appetite for new regulations which allows for a two stage permit and order regime to be put in place. This would allow the two historic events, the Jim Clark and Isle of Mull Rallies, to recommence albeit under a much stricter safety regime than had previously been in place. It also places Local Authorities and the Motorsports Governing Bodies at the heart of the decision making process. Additionally, the regulations would allow for additional new events to be considered in the future if they have the backing of the relevant local authority and motorsports governing body.

Each event has the potential to bring significant income to the local area. A previous study by Motorsport UK concluded that the Jim Clark Rally made a substantial contribution to the Scottish Borders economy and valued that income at circa £3m in 2006. The same study showed that in 2010 the local economic impact of stage rallies, hill climbs and sprints, in the UK as a whole, was estimated to be 'at least £23m'. It also estimated that 20 such new closed road motorsport events could generate between £18.5m and £40.9m in local community benefit over a five year period.

Additionally, previous estimates have placed the benefit of the Isle of Mull Rally to the local economy in the region of £1m per annum.

#### **Costs**

There would be costs to Local Authorities in relation to authorising new events should they wish to consider these in the future. This has not been quantified but would be considered to be low given that it would be administrative costs which the regulations allow to be recouped from event organisers in the form of a fee if they so wished. This would also be offset by the positive impact on the local economy.

It is also envisaged there may be some costs to businesses as a result of road closures, additional fuel or transportation costs, but this is expected to be minimal. However, this has not been quantified as it would differ between events. The short term nature of the

road closures coupled with the positive benefits that events bring through tourism would offset these costs.

There would be no additional costs to the Scottish Government in relation to these new regulations.

There may be some small additional costs for individuals who live in the immediate locality of events associated with short term road closures. Costs such as extra fuel or travel costs as a result of road diversions may be encountered but these would be temporary in nature and are expected to be low.

## **Scottish Firms Impact Test**

### Public Bodies

There will be some administrative costs for public bodies, such as local authorities – as they will be responsible for producing and approving Motorsport Orders. While local authorities currently have powers to close roads for sporting and leisure events via the Road Traffic Regulation Act 1984, they do not have the power close public roads for time trials, motor vehicle races or trials of speed. The effect of such a motorsports order would be to suspend a prescribed list of road traffic regulations, such as speed limits for those participating in the event.

While the proposals were clearly supported by stakeholders, it was noted that local road authorities should have the ability to refuse an event or carry out works on public roads, in connection with an authorised event, as they deem necessary. The majority of Local Authorities who responded stated that they would be willing to work with the relevant Motor Sports Governing Body to host an on road event within their area.

### Tourism

Major rallies can involve 100 competitors, their families and their crew, as well as a large number of officials and volunteer marshals. These groups will also contribute to the local economy via their spending. High profile events, like the Beatson's Mull Rally can also attract considerable interest from national and international media, which has also benefitted local tourism. Attendance at the 2016 Mull rally was estimated to be 5,000 for the two days, which generated approximately £1 million for the local economy.

Interestingly, it was noted by Marketing of Mull and Iona that the provisions contained within the regulations offer flexibility to local communities by “enabling local authorities to exercise road closures for additional motorsport events e.g. in the winter months to bring a much needed boost to the local economy out-with the main tourist season.”

### Small Businesses

Respondents recognised that there could be some minor financial impacts to some local businesses when sections of roads are closed for a few hours for events, as they cannot obtain passing trade. However, this has not been quantified as it would differ between events. Indeed respondents noted that the short term nature of the road closures coupled with the positive benefits that events bring through tourism would help to offset these costs.

## **Competition Assessment**

- There is no impact on competition.

#### **Test run of business forms**

- N/A – No new forms for businesses to complete.

#### **Legal Aid Test**

It is not expected that the proposals will have any impact on the level of use that an individual makes to access justice through legal aid or on the possible expenditure from the legal aid fund. This will be further explored and updated as necessary as the regulations progress.

#### **Enforcement, Sanctions and Monitoring**

It is not expected that any ongoing enforcement or sanctions will be required by the Scottish Government. However, the Scottish Ministers do have the power to amend the Regulations to impose additional conditions as part of the authorisation process should they feel this is necessary, as has happened in the past with the Scottish Borders Council (Jim Clark Memorial Rally) Order Confirmation Act 1996.

The motor sport governing body and the local authorities also have powers to place additional conditions on both the motor sport permit and motor sport order to ensure spectators' safety, should they deem this necessary. Neither permits nor orders have to be issued if there are genuine concerns associated with any aspects of an event – their issue is at the discretion of the body/authority.

#### **Implementation and Delivery Plan**

Implementation of the proposals will be aided by guidance on the development of motorsport orders, in consultation with stakeholders. The guidance will be issued after the regulations coming into force.

#### **Post-implementation review**

There are no formal plans to review the regulations at a specific point in the future. However, the Scottish Government will continue to liaise with the motorsports working group to monitor their effectiveness.

#### **Summary and Recommendations**

Given the reasons and cost/benefit above, Option 3 is deemed the most appropriate to meet the policy intention whilst taking local authority and business considerations into account.

#### **Summary Cost Benefit Table**

<b>Option</b>	<b>Total benefit per annum</b>	<b>Total cost per annum</b>
1	<ul style="list-style-type: none"> <li>• No benefit</li> </ul>	<ul style="list-style-type: none"> <li>• No additional cost to businesses.</li> <li>• No additional costs to Local Authorities or the Scottish Government as no existing events due insurance issue and no new events.</li> </ul>

2	<ul style="list-style-type: none"> <li>• Historic Jim Clark and Isle of Mull Rallies could once again take place.</li> <li>• The benefit of the Jim Clark Rally has previously been estimated at £3m for the local economy and the Isle of Mull Rally at £1m.</li> </ul>	<ul style="list-style-type: none"> <li>• Only existing events could be held, but the insurance difficulties the current events have been facing would likely preclude this.</li> <li>• Cost of delay to any new events as each event would require a new separate Act of Parliament.</li> <li>• Scottish Government administrative costs associated with each new Act of Parliament.</li> </ul>
3	<ul style="list-style-type: none"> <li>• Potential to promote a wealthier and fairer Scotland.</li> <li>• Historic Jim Clark and Isle of Mull Rallies could once again take place.</li> <li>• New events could be considered.</li> <li>• The benefit of the Jim Clark Rally has previously been estimated at £3m for the local economy and the Isle of Mull Rally at £1m.</li> </ul>	<ul style="list-style-type: none"> <li>• Administrative costs for Local Authorities/Motorsports Governing Bodies associated with permitting events.</li> <li>• Potential for small associated costs to Businesses and Individuals associated with temporary road closures.</li> </ul>

### Declaration and Publication

The Cabinet Secretary or Minister responsible for the policy (or the Chief Executive of non-departmental public bodies and other agencies if appropriate) is required to sign off all BRIAs prior to publication. Use appropriate text from choices below:

- Sign-off for Final BRIAs:

I have read the Business and Regulatory Impact Assessment and I am satisfied that (a) it represents a fair and reasonable view of the expected costs, benefits and impact of the policy, and (b) that the benefits justify the costs. I am satisfied that Business impact has been assessed with the support of businesses in Scotland.

**Signed: Michael Matheson**

**Date: 27 February 2019**

**Minister's name - Michael Matheson**

**Minister's title - Cabinet Secretary for Transport, Infrastructure and Connectivity**

**Scottish Government Contact point:  
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