

Regulatory Impact Statement

This Regulatory Impact Statement pertains to the Land Transport Rule: Steering Systems Amendment 2010 and Land Transport Rule: Traction Engines 2010. For clarity, these are treated separately below.

1. Land Transport Rule: Steering Systems Amendment

Executive Summary

At present, regulatory requirements concerning vehicle steering systems are specified by three separate regulatory instruments:

- Land Transport Rule: Steering Systems 2001 (the Steering Systems Rule) sets out safety requirements and standards covering the design, construction and maintenance of steering systems in motor vehicles.
- The prohibition on certifying left-hand drive (LHD) vehicles for entry into service, or operation in service, in New Zealand is one of the last of the *Traffic Regulations 1976* remaining in force.
- The criteria that, in practice, determine the issue of exemptions to this prohibition are set out in a notice published in the *New Zealand Gazette* in 1998.

Furthermore, the current criteria for allowing the registration of LHD vehicles place considerable obstacles in the way of those enthusiasts who want to own LHD vehicles for their own sake, even though such vehicles are not prohibited and may be freely registered under certain conditions. This unnecessary regulation is widely perceived as unfair.

The purpose of Land Transport Rule: Steering Systems Amendment 2009 (the proposed Rule) is to amend the Steering Systems Rule so that the conditions under which LHD vehicles may be registered are clearly accessible, and to revise those conditions to remove unnecessary regulation. By incorporating most of the current policies regarding exemptions into the Rule, the need for exemptions from the Rule will also be greatly reduced.

Ergonomic considerations and some limited research suggest that in a right-hand drive (RHD) environment, a LHD vehicle will be less safe than an otherwise similar RHD vehicle. However, given the range of vehicles already admissible for certification in New Zealand, it is not thought that LHD vehicles are so dangerous that they should be prohibited entirely. For these reasons, instead of assessing the admissibility of a vehicle based on facts about its ownership, as do the current criteria, the proposed amendment Rule will prohibit the certification of LHD vehicles where RHD equivalents are available, but will ease access for enthusiasts to collectible LHD-only vehicles—designated Special Interest Vehicles (SIVs).

The main revision to criteria for acceptable vehicles is that immigrants or New Zealanders returning to live in New Zealand will no longer be able to register LHD vehicles simply because they have owned and used the vehicles overseas. Instead, subject to specified conditions and processes, anyone will be able to register unique or collectible LHD vehicles without any overseas ownership requirement.

Status Quo and Problem

At present LHD vehicles may only be registered in New Zealand if they have been issued with an exemption by the NZ Transport Agency. The requirements for obtaining an exemption for vehicles that have the steering controls on the left are not currently contained, as one might expect, in the rule governing steering systems. The proposed amendment Rule makes the criteria for acceptable vehicles more accessible and largely removes the need for exemptions. It also ensures that these criteria are based on features of the vehicles, rather than their owners, and thus removes unnecessary restrictions and apparent unfairness.

The likelihood that LHD vehicles pose an increased risk to safety, compared to RHD vehicles, is a good reason to continue to restrict their entry into the fleet, as long as suitable alternatives are available. However, where such alternatives are not available, regulation should avoid imposing requirements that are unnecessary, ineffective or excessively costly. Given consideration of the range of vehicles that may be registered in New Zealand, the presumed safety deficit of LHD vehicles does not warrant prohibiting them altogether.

The current regulations make it fairly easy to register *specialised* vehicles (such as cranes or earthmoving vehicles) that either need to be LHD for their operation, or that are not available as RHD. However, it is still necessary for them to be issued with an exemption.

Light vehicles more than 20 years old may also be exempted, but the situation for modern LHD light vehicles is more complicated. LHD light vehicles that are less than 20 years old may be registered in New Zealand, but only if they have been registered and used by the importer overseas for at least 90 days. This provision is intended to benefit immigrants or New Zealanders returning from LHD jurisdictions who wish to bring vehicles they already own with them. It is not based on an assumption of any benefit derived from the vehicle being LHD, and in most cases the importers' needs could be fulfilled by a RHD vehicle. However, immigrants may choose to take advantage of this provision to import and register a modern LHD collectible vehicle that is not available in RHD.

Similarly, New Zealand LHD enthusiasts who have the means to register and use a vehicle for 90 days overseas may also use this provision to import a collectible vehicle. Because such overseas use can be difficult to prove, the provision is difficult to enforce and can also be exploited illegitimately.

LHD enthusiasts complain that this situation is unfair and imposes unnecessary and unreasonable costs. Modern LHD vehicles are allowed on our roads, but enthusiasts may only purchase them if they can afford to arrange overseas ownership and use for 90 days, or if they are prepared to exploit the provision fraudulently.

Background

There are around 5500 LHD vehicles of all sorts in the New Zealand fleet. The number of registrations each year is quite variable but in recent years has been around 450–500.

A wide range of specialised LHD vehicles are needed for use in New Zealand. These are either only available as LHD or must have a steering control on the left-hand side as part of their function. Such vehicles can include mobile cranes, hearses and dual control vehicles. There are also many LHD light vehicles in New Zealand, which are owned by enthusiasts or which have been imported by immigrants. *Regulation 90* of the *Traffic Regulations 1976* allows the NZ Transport Agency to exempt vehicles from the RHD requirement by notice in the *Gazette* and, to simplify this process, a 1998 *Gazette* notice details all the categories of vehicle that are exempt.

The prohibition on the operation of LHD vehicles, and the authority to allow exemptions from this requirement, are among the last provisions remaining in the Traffic Regulations. The Traffic Regulations are being progressively revoked and incorporated into land transport rules. It is therefore appropriate for the Steering Systems Rule to incorporate *regulation 70* (which prohibits LHD vehicles) and most of the requirements currently contained in the *Gazette* notice (which specifies exempted categories of vehicles). At the same time, these criteria should be revised.

Objectives of the Amendment

The process by which LHD vehicles may be registered in New Zealand will be simplified and made easier to access and understand. The proposed Rule is part of the programme converting regulations to rules.

The ability to register LHD vehicles of low value to New Zealand should be restricted, while costly barriers to owning vehicles highly valued by some New Zealanders should be removed. Assessing vehicles on the basis of their own features, rather than facts about their owners, will avoid the impression of unfairness currently created by allowing some vehicles in while identical vehicles are prohibited.

The current criteria for admitting specialised LHD vehicles will be largely retained, but will be included in the Steering Systems Rule. It is intended that the need for exemptions from the Rule will be greatly reduced.

Regulation 70 will be revoked but its effect will be retained by amending the Steering Systems Rule to confirm that LHD vehicles may not be registered or licensed in New Zealand, and to incorporate established and revised criteria for allowing exceptions to this requirement. Some measure should be taken to mitigate the small additional risk to safety posed by allowing LHD vehicles to be used on New Zealand roads.

Comment

The proposed amendment does not remove all restrictions on registering LHD vehicles. Continued restrictions are appropriate because there are reasons to think that LHD vehicles are less safe than equivalent RHD vehicles. Where substitution is possible, this increased risk to drivers and other road users can be completely avoided.

The chief reason for thinking that LHD vehicles pose a safety risk is that they are ergonomically compromised. In many everyday driving situations, such as heavy traffic or when overtaking or changing lanes, visibility is likely to be reduced compared to vehicles that place the driver in the centre of the road. Although this deficiency is clearly a risk, it is not known what contribution it makes to crash rates. Vehicles with the steering wheel on the 'wrong' side, are usually too small a proportion of a national fleet to provide meaningful crash statistics.

The only research examining this issue is a recent Canadian study of imported RHD vehicles, which have become common in British Columbia.¹ This study examined insurance claims and found that RHD vehicles were around 40 percent more likely to crash than 'normal' LHD vehicles. However, it did not establish that there was overall a greater risk of injury. There are methodological issues with this study that may have exaggerated the effect, and its wider applicability is unknown, but it is plausible that it demonstrates a real safety concern.

The most significant change proposed by the Amendment affects "Category A" vehicles –LHD light vehicles less than 20 years old. The NZTA estimates that of the 3500 LHD vehicles imported in the last 10 years, around a third were less than 20 years old when imported. At present, such a vehicle may be registered by its importer if he or she has previously owned, registered and used it overseas for at least 90 days. In practice, it can be difficult to establish that this condition has been fulfilled. And in the case of otherwise ordinary LHD vehicles the concession is of dubious benefit.

¹ Cooper PJ, Meckle W, Nasvadi G, Wiggins S 2007. The Safety of Right-Hand-Drive Vehicles in British Columbia. Insurance Corporation of British Columbia Performance Analysis Services. A revised version of this paper is in *Accident Analysis and Prevention* 2009 41(1):108-14.

RHD vehicles are readily available in New Zealand at prices comparable to those overseas, whereas ordinary LHD vehicles tend to have a low resale value here. (Such imported vehicles must remain registered in the name of the original importer for five years.) Used as everyday vehicles, LHD vehicles may also be inconvenient, as roadside facilities such as parking receipt machines or drive-through vendors are arranged for RHD vehicles. It is also possible that drivers who are used to driving on the right-hand side of the road will adapt better to New Zealand driving conditions if they are using a more appropriate, RHD vehicle.

The current policy allows vehicles into the New Zealand fleet that may be less safe and are of little intrinsic value, without providing significant benefit to their importers or anyone else.

On the other hand, there is strong demand from New Zealand enthusiasts for certain types of modern LHD vehicles. These tend to be prized, performance-oriented or low production vehicles that are unlikely to be used as everyday cars. At present the 90 day overseas ownership requirement is a significant constraint on the availability of these vehicles. The only alternative is to import a vehicle 20 years old or more, or to have modern vehicles converted to right-hand drive. Older vehicles tend to have worse safety and environmental features. RHD conversion is expensive and, for enthusiasts, has an undesirable effect on the vehicle's originality and value. More significantly, it may compromise frontal impact protection.

Alternative Options

Three options for Category A (light vehicles under 20 years old) were considered and consulted on.

Status quo

The status quo could be substantially maintained by simply incorporating the gazetted exemption categories into the Rule without revision. However, as indicated above, possible improvements have been identified.

SIV and immigrants' concessions

Another option considered was to introduce the SIV provision as proposed, allowing enthusiasts to register those vehicles, but also to retain an immigrants' concession. The current immigrant's concession allows immigrants, or returning New Zealanders, to register vehicles that have been owned and used overseas for 90 days. This concession is open to 'abuse' by those who are able to arrange ownership overseas in order to register a collectible vehicle. This option would have retained such a concession but included tougher conditions to ensure that it is only available to genuine immigrants. This was not supported by submitters and it is doubtful that there is a net positive value from the immigrants' LHD vehicle concession.

More regulation

The proposed rule may seem overly generous. Few non-specialised LHD vehicles could not be substituted by, or converted to, RHD vehicles – so it is possible to take a much tougher line on excluding them. This would impose considerable costs and inconvenience on some people and communities, as well as frustrating the preferences of LHD enthusiasts. There is the potential for a small net safety benefit, but this cannot be quantified and may not be realised in practice. RHD conversion can itself compromise a vehicle's frontal impact protection and the salient alternative for enthusiasts is probably older vehicles, which are less safe.

Preferred Option

It makes sense to have all requirements concerning steering in the Steering Systems Rule. The present policy is to transfer land transport legislation from regulations to rules, in order to clarify and consolidate requirements and ensure better consultation. The opportunity should be taken to improve the criteria and processes for handling LHD vehicles.

The proposed amendment Rule is not expected to greatly affect the number of LHD vehicles entering the fleet, as the new SIV concession is designed to cater to a niche market of enthusiasts. It is likely that the number of modern LHD performance vehicles imported by these enthusiasts will increase, but fewer older LHD performance vehicles will be brought in. The number of LHD vehicles brought in to be used as everyday transport is also expected to decrease.

The proposed amendment Rule adopts the same criteria for assessing SIVs as Land Transport Rule: Frontal Impact 2001. The NZ Transport Agency will make the assessment and will issue no more than 500 permits each year. This number was reached in consultation with LHD vehicle enthusiasts and takes account of the number of vehicles currently imported. The limit on permits is intended to mitigate the small extra safety risk to the vehicle fleet and also to avoid creating a mainstream market for LHD vehicles. The quota is not expected to restrict the importation of vehicles by genuine enthusiasts. The NZTA notes that the corresponding quota of 200 permits for SIVs that are not required to meet frontal impact standards has not come close to being reached.

Costs

To Government

There will be no additional costs to government from the proposed Rule.

To Business and the Public

Most of the changes accord with current practice and so are not expected to have any cost impact on the industry or the public. Some processes may be simplified. (For example, specialised dual control vehicles and hearses will be automatically eligible for entry.)

A new fee of \$150 will be introduced to cover the cost of processing a permit to register a Special Interest Vehicle (Category A).

The current concession for vehicles owned overseas for 90 days or more may give some people moving to New Zealand the opportunity to bring their own vehicle with them more cheaply or conveniently than buying a similar (but RHD) vehicle once here. As discussed above, any long term saving for the importer is questionable, and there may be other disadvantages. Nonetheless, the proposed amendment Rule will remove a possible benefit from a small number of people.

Although the Rule also specifies in-service conditions, vehicle compliance need only be ensured at entry. Vehicle inspection organisations would not have to purchase any new equipment, nor would the changes increase the time taken for vehicle inspection.

Consultation

Notification of the proposed amendment Rule was published in the Auckland, Hamilton, Wellington, Christchurch and Dunedin daily newspapers; in selected regional daily newspapers, on 12 July 2008; and in the *Gazette* on 17 July 2008.

Approximately 460 persons registered on Land Transport New Zealand's consultation database were notified by email or letter of the availability of the draft amendment Rule. The draft Rule, related information and an online submission form were posted on Land Transport New Zealand's website. Printed copies of the proposed amendment Rule were sent to individuals or organisations who requested them.

Stakeholder groups consulted included the Ministry of Economic Development, the Ministry of Agriculture and Forestry, New Zealand Police, the New Zealand Defence Force, the Ministry of Justice, Transit New Zealand, the New Zealand Automobile Association, the Motor Industry Association, the Independent Motor Vehicle Dealers Association, the NZ Federation of Motoring Clubs, the Power Crane Association, the NZ Heavy Haulage Association, Road Transport Forum NZ, the Taxi Federation, Federated Farmers, the Funeral Directors Association, the Left-hand Drive Enthusiasts Federation, and the Low Volume Vehicle Technical Association.

Submissions on the proposed amendment Rule closed on 21 August 2008, 40 days after the newspaper notice was published. The NZTA received 25 submissions, which were taken into account in revising the proposed amendment Rule.

2. Land Transport Rule: Traction Engines 2010

Executive Summary

The purpose of Land Transport Rule: Traction Engines 2010 is to ensure that traction engines operated in public places are used safely and by suitably qualified operators.

Traction engines are currently subject to transitional regulations that were put in place in 2006 in response to a fatal traction engine explosion in the United States. These regulations did not go through a full consultation process and it was intended that they would be reviewed and consulted on before being replaced by a Land Transport Rule.

Development of the Rule has confirmed that the provisions of the current regulations are adequate to manage the risk presented by traction engines. However, some revisions are necessary. In particular, the licence requirements for operators are unreasonably demanding and there is an error in the regulations concerning a certificate that is issued under other legislation.

The proposed Traction Engines Rule is in line with the objective, expressed in the *Government Statement on Regulation*, of reviewing existing regulation “in order to identify and remove requirements that are unnecessary, ineffective or excessively costly”. It will replace the transitional regulations and retain their requirements with minor corrections.

Status Quo and Problem

The Land Transport (Traction Engine Safety) Regulations 2006 (the 2006 Regulations) were made as an interim measure under transitional provisions in the Land Transport Act 1998. A serious incident in the United States had highlighted the potential danger of traction engines and it was considered desirable to have a new safety inspection regime in place more quickly than a Rule could be processed.

Subsequent development of the Rule, and consultation with interested parties, determined that the 2006 Regulations are overly restrictive. They require that all users of traction engines hold a Class 2 driver licence, allowing them to drive a rigid vehicle of 4.5 to 18 tonnes, and do not provide for supervised use of traction engines by unqualified persons. This goes beyond the policy intent of the Regulations, which was that *at least one* of the operators of a traction engine should hold such a licence. But even this is now considered unnecessary, as the specialised qualifications that the steerer and driver must hold are more appropriate evidence of capability.

The types of vehicles for which a Class 2 driver licence is issued, and with which drivers must demonstrate proficiency, are significantly different from traction engines. The current regulations impose the cost of training and applying for an irrelevant driver licence on prospective operators of traction

engines. Existing operators are also affected, as Class 2 licences require a medical examination on renewal, at ten year intervals. The proposed Traction Engines Rule requires that all operators hold Class 1 driver licences.

The proposed Rule also corrects an error in the 2006 Regulations. The 2006 Regulations purport to regulate the expiry of certificates that are actually issued under other legislation. Certificates of inspection for the pressure equipment on traction engines are issued under Health and Safety in Employment (Pressure Equipment, Cranes, and Passenger Ropeways) Regulations 1999. Those regulations specify that certificates are valid for a time period determined by the inspecting body, based on “industry standards” with regard to safety. The proposed Traction Engines Rule does not challenge this expert assessment, but requires that traction engines used in a public place display a valid certificate of inspection no more than two years old.

Objectives

The Land Transport Act 1998 (the Act) includes provisions requiring operators of traction engines to hold qualifications, and requiring traction engines to be safe and operated in accordance with regulations and rules. The proposed Traction Engines Rule specifies these requirements, revising the current regulations.

Purpose of the Rule

The purpose of the proposed Rule is to ensure that no one is endangered by the use of a traction engine in a public place. The chief risk of using a traction engine is that a boiler explosion or an uncontrolled release of steam could cause serious injury or death. However, such an incident is considered to be very unlikely with proper maintenance and the level of risk is low. A minimal regulatory regime is provided by the current transitional regulations, and this is continued by the proposed Traction Engines Rule.

The use of traction engines in public places also poses risks that are not related to their pressure equipment. Traction engines are often used in static displays to power vintage machinery and can have moving parts, such as belts, that are a hazard. And, although traction engines move more slowly than other vehicles, all moving vehicles have some risk of injuring people.

Background

As far as can be determined, there has never been a serious accident in New Zealand, caused by the failure of a traction engine's pressure equipment. There have been occasional incidents overseas, but even when there were many thousands of traction engines in everyday use, boiler explosions seem to have been rare. The UK also has no record of any boiler explosions. Most traction engines in New Zealand are built to UK standards.

The most recent serious incident occurred in Ohio, USA. A traction engine exploded before a fair in 2001, killing five people. The force of the explosion

blasted hot water and metal fragments over a very large area and, although the fair was not yet open, around forty people were injured. Investigation revealed that an important factor contributing to the explosion was the poor condition of the pressure equipment. At the time of the incident, Ohio did not have an inspection regime for traction engines but, in response to the investigation, it introduced emergency regulations in 2003. A previous explosion in the United States, in 1971, seriously injured several people and was also attributed to faulty equipment.

Provisions concerning the operation of traction engines in New Zealand were previously contained in the Boilers, Lifts, and Cranes Act 1950. This required that the pressure equipment of traction engines was inspected annually. It was repealed on 16 January 2006 when provisions for traction engine safety were included in the Land Transport Act 1998 and, as an interim measure, the Land Transport (Traction Engine Safety) Regulations 2006 (the 2006 Regulations) were made under transitional provisions in the Act. These transitional provisions, and the 2006 Regulations, were to expire on 1 July 2009. The automatic expiry of transitional provisions has now been repealed and the 2006 Regulations will be revoked when the Rule comes into force.

Alternative Options

Retaining the current Regulations

Due to their intended transitional nature, the 2006 Regulations did not benefit from the same level of consultation as the proposed Traction Engines Rule. Although the inspection regime instituted by the 2006 Regulations is satisfactory, some provisions should be revised and simply retaining the Regulations is not the best option.

The current policy is not to revise regulations, but to replace them with rules. Rules are the principal form of delegated legislation for transport and are intended to be written in a consistent and easy to understand style.

Removing Regulations

It would be possible to revoke the 2006 Regulations without replacing them. The Act already requires that traction engines operated in public places must not be used “in a manner that, having regard to all the circumstances, is or might be dangerous to the public or to a person”. Traction engine operators are generally conscientious with respect to the dangers of their hobby and, prior to the current regulations coming into effect, one of their national bodies adopted them as a code of practice.

The UK is an example of a jurisdiction having no specific regulation of traction engines. However, with around 3000 traction engines, the hobby there has a much larger community to provide the administrative resources for self-regulation. The National Traction Engine Trust of Great Britain sets and maintains standards and codes of practice, trains operators, and coordinates with national and local government. Most traction engines are insured and the

insurance companies require and carry out inspection and certification of equipment.

In New Zealand, consultation for this Rule has confirmed that the current inspection requirements are appropriate. To ensure accountability, they should continue to be incorporated into regulations, with penalties for non-compliance. This is justified by the risk to the public from the use of traction engines. The Act envisages that operators of traction engines in a public place should be appropriately qualified and that their equipment be appropriately certificated. Note that the use of traction engines in places that are not public places is not regulated by the Act or the 2006 Regulations, and such use would remain unregulated by the proposed Rule.

Tougher regulations

Options of greater regulatory oversight have been considered. Due to the low likelihood of a serious traction engine accident, the increased compliance costs of more stringent requirements, and the regulatory costs of greater monitoring, make them inappropriate. While there is a safety risk, it is adequately managed by the existing minimal regulatory provisions which are continued by the proposed Traction Engines Rule.

Preferred Option

The proposed Traction Engines Rule replaces the 2006 Regulations and largely retains their minimal regulatory regime for traction engine safety, with penalties for non-compliance and minimal monitoring by the NZ Transport Agency. The most significant change is that operators need only hold a Class 1 driver licence rather than a Class 2 licence. The proposed Rule also corrects an error concerning the expiry of certificates of inspection.

In addition, the proposed Traction Engines Rule will improve upon the 2006 Regulations by: requiring that an appropriately qualified person be in charge of a traction engine at all times it is under steam, even if it is not moving; requiring the production of a driver licence or qualifications if requested by an enforcement officer when the traction engine is in use in a public place that is not a road; allowing supervised operation by unqualified users; and requiring that a traction engine used in a public place be fit for purpose.

The success of the current inspection and certification requirements is difficult to quantify as the risk, in any case, is very low. However, no serious injury or death has been recorded in New Zealand involving a traction engine. Nonetheless, there is some risk. Traction engines are antique equipment which are often operated in close proximity to the public in parades, on show and fair days, and at traction engine rallies. Continued regulation that minimises compliance and monitoring costs is therefore justified.

Costs

To Government

There will be no additional costs to government from the proposed Rule. The NZTA already maintains a record of inspections and will continue to do so under existing funding arrangements.

To Business and the Public

Operator's obligations under the proposed Traction Engines Rule are similar to the requirements of the 2006 Regulations. The Rule will require operators to be appropriately qualified and licensed and, if it is to be used in a public place, pressure equipment must be inspected every two years. Compliance costs are reduced as operators will no longer be obliged to obtain or renew Class 2 licences.

Consultation

The consultation draft of the Traction Engines Rule was released by Land Transport New Zealand in April 2008. Organisations and individuals with an interest in the Rule were advised of the Minister's intention to make the Traction Engines Rule and copies of the yellow draft were sent to key stakeholder groups. The availability of the yellow draft was publicised in metropolitan and selected regional daily newspapers and in the New Zealand Gazette. The draft was also made available, together with questions and answers, on the Land Transport New Zealand website. Submissions were received from nine groups and individuals. Their comments have been reflected in the proposed Traction Engines Rule.

In November 2008, the NZ Transport Agency sent a green (post consultation) information draft to inspection bodies authorised to carry out boiler certification. Three submissions were received.