

Regulatory Impact Statement

Road user charges: A regulatory framework for electronic management systems

Agency disclosure statement

1. This Regulatory Impact Statement (RIS) has been prepared by the Ministry of Transport (the Ministry).
2. It provides an analysis of options to improve the regulatory framework for the electronic management of road user charges (RUC), including simplification of the process for becoming an electronic system provider, management of information collected by those providers, and the ability to prescribe voluntary standards for those providers.
3. The policy options comply with the Government Statement on Regulation.

Minor proposals exempt from Regulatory Impact Analysis

4. The proposals relating to the form of a RUC licence and approving mechanical hubodometers represent proposed changes to governance arrangements and are expected to have little impact outside government.
5. The proposal to move the RUC licence display requirements from primary legislation into regulations is also expected to have little or no impact on businesses, individuals or not for profit entities.
6. As such, these proposals are exempt from the Regulatory Impact Analysis requirements and are not analysed in this document. A technical review of the licence display requirements will be conducted at a later stage and, if necessary, a RIS will be developed at that time.

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Status quo and problem definition

Status quo

7. The RUC system was implemented in 1978 and relied on the use of paper licences and mechanical hubodometers. The administrative arrangements in the legislation have largely remained untouched since that time. Before 2009 there had been some adjustment to administrative practises (such as putting the register of RUC licences onto a computer) but this was done without updating the legislation.
8. In 2009, the Road User Charges Regulations 1978 were amended to enable transport operators to use approved electronic distance recorders and electronic display of RUC licences, on a voluntary basis, as an alternative to mechanical hubodometers and paper licences. Electronic distance recorders are provided by private sector companies.
9. The amended regulations also gave the Secretary for Transport (Chief Executive) the authority to approve electronic distance recorders if satisfied that they are fit-for-purpose. Any approval granted by the Chief Executive may be subject to terms and conditions he/she considers necessary (eg, term and disputes).

Problem definition

10. The key issue is that electronic distance recorders were enabled through an amendment to the Road User Charges Regulations 1978 but the primary legislation remains designed for paper-based administrative systems. There are currently no statutory provisions covering the electronic system provider's duties, particularly in relation to management of information.
11. These matters are at present being managed through terms and conditions agreed when an electronic system provider is granted authorisation to issue RUC licences or device approval. This arrangement is not as effective as it could be as it provides scope for: duplication in testing; gaps in relation to crucial terms and conditions; and general ambiguity in relation to roles, responsibilities and objectives between the two processes. All of which is potentially damaging to the integrity of the system.
12. There is also a need to provide industry with clear, objective guidelines around meeting the fit-for-purpose criterion in relation to electronic distance recorders.

Becoming an electronic system provider

13. While amending the Road User Charges Regulations 1978 was a necessary first step to enabling the reliable and accurate calculation and payment of RUC by electronic means, there now exist dual governance arrangements: one for RUC licences; and one for electronic distance recorders. This results in a private sector company needing to obtain an authorisation to issue licences and a statutory device approval before being able to offer electronic RUC management services to transport operators. Having two applications provides scope for confusion, duplication and conflicting objectives/priorities.

Information held by electronic system providers

14. Electronic system providers assist their customers in the calculation, payment and display of RUC licences while acting as a representative of the NZ Transport Agency for the issuing of RUC licences. Electronic system providers have duties to both parties and hold a lot of RUC information¹ about a vehicle.
15. The rules for the collection, retention, storage and use of RUC information held by the transport operator are provided for in primary legislation. However, the existence of electronic system providers was not envisaged when the RUC system was developed and as a result they are not provided for in the Road User Charges Act 1977.
16. The rules for information held by electronic system providers are at present set out in two separate documents: a contract between the system provider and the NZ Transport Agency; and the terms and conditions of approval imposed on the electronic system provider by the Chief Executive. Both documents are subject to negotiation prior to signing and there is scope for variation to exist from provider to provider.

Standards

17. The amended regulations enable the Chief Executive to approve an electronic distance recorder if he/she is satisfied that the device is fit-for-purpose. At present, compliance with the fit-for-purpose criterion is being determined through the use of independent expert evaluations. This is a relatively subjective method of evaluation and the feedback from industry is that the broad fit-for-purpose criterion is not helpful in terms of product development. In September 2009 Cabinet noted that the Ministry of Transport was to begin working on a common set of requirements for the calculation and payment of RUC by electronic means.

Objectives

¹ RUC information means information that has been generated or collected for any purpose relating to the provision of RUC services.

18. The objectives for improving the regulatory framework for the electronic management of RUC are to:
- reduce costs for business compliance and government administration
 - ensure that the electronic system is integrated into RUC management in its own right rather than being added onto a 1970's system
 - put in place safeguards and management practices to ensure the electronic system is consistent, transparent and well understood by transport users, electronic system providers and government administrators.
19. The electronic system is new, with only one provider currently approved, and few vehicles as yet using electronic distance recorders (243 out of a population of 160,000 heavy vehicles). It would be prudent to ensure that a properly developed regulatory framework is in place in the near future, before the use of electronic distance recorders becomes widespread.

Regulatory Impact Analysis

Becoming an electronic system provider

Proposed option

20. The preferred method of solving the problem of requiring two separate applications to become an electronic system provider is to create a single application process tailored to the unique characteristics of electronic system providers. This requires new provisions to be inserted in the primary legislation.
21. The impact of the proposal is not extensive, in that the Ministry does not expect applications to exceed 10 over the next 5-10 years. However, each application is unique and involves exploring technical matters (eg, determining the security, accuracy and reliability of the device) so any reduction in the time spent by businesses and government agencies on an application would be desirable.
22. The tangible advantages of the proposal accrue mainly to business. A single application process would be simpler to understand, remove the potential for duplication in system testing, and avoid conflicting requirements. As a result we would expect to see a reduction in the time necessary to complete an application and legal costs arising from negotiation of two application processes. A single application process is unlikely to reduce the costs of testing equipment for its suitability.

23. The advantage to government is intangible. A straightforward process will require less effort to ensure consistency or reconcile conflicts and will improve the credibility of the system.
24. The Ministry proposes only this option which creates one application and approval process for electronic system providers. The Ministry does not support the status quo or any option that increases the number of processes.

Management of information

Proposed option

25. The proposed option is to provide in legislation for responsibilities relating to the collection, retention, storage and use of RUC information collected by electronic system providers. In developing this proposal, the Ministry has drawn on model legislation already in use in Australia².
26. The Ministry and the NZ Transport Agency have already put information arrangements in place through terms and conditions of system provider contracts and system provider approvals. These terms and conditions are agreed upon with system providers on an individual basis. The proposal is to place in legislation electronic system providers' duties concerning the collection, use and distribution of RUC information in order to ensure a consistent approach for the future that will limit the opportunity for variation of these rules between providers. The Chief Executive will also need access to this information to audit and monitor the provision of electronic RUC services.
27. The other advantage of this proposal is that it provides a much greater level of transparency so that transport operators and electronic system providers know what is expected of one another in terms of RUC information. The provisions will need to balance the NZ Transport Agency's need for information against a transport operator's right to privacy and ensure that there is a sensible set of boundaries. Electronic system providers will remain subject to the requirements of the Privacy Act 1993.
28. This proposal will not impose any record keeping requirements above those that would be required in terms and conditions imposed under current administrative arrangements.
29. The authorisation to issue RUC licences process is used for a variety of organisations (eg, PostShop and Vehicle Testing New Zealand) and therefore cannot be adjusted to meet the unique characteristics of electronic system providers. The Ministry considers that working through the consistency issues with the two existing processes would

² National Transport Commission (Model Legislation – Intelligent Access Program) Regulations 2006.

be a larger volume of work than creating, in legislation, one tailored application and approvals process for electronic system providers. Therefore, the Ministry does not support the status quo.

Standards

30. The Ministry's preferred approach to introducing outcome-based standards³ for electronic distance recorders and related systems would be for the Chief Executive to be able to set standards that offer an approved method of achieving compliance with the fit-for-purpose requirement.
31. There are a number of ways that this could be achieved but the two we consider most appropriate for this situation are set out below. Either option is expected to reduce private sector legal costs in clarifying the fit-for-purpose criterion over the status quo.

Option one: Enable standards through a code of practice

32. Option one involves including statutory provisions that empower the Chief Executive to issue compliance advice in the form of a code of practice, by notice in the *Gazette*. This document would exist outside legislation and could specify standards, requirements, procedures or acceptable solutions designed to assist industry in meeting the fit-for-purpose requirement.
33. A code of practice represents a quasi-regulatory solution where standards are 'endorsed' by government. The content of a code of practice may not necessarily be the only means of meeting the fit-for-purpose requirement and its use would not be mandatory.
34. Outcome-based standards allow for maximum innovation in the market for electronic RUC management systems, but with innovation comes change and the Ministry expects the technology in this area to move quite quickly. The greatest advantage of this option is flexibility to update and amend a code of practice as required.
35. A code of practice would be used by potential electronic system providers, those who test the systems as being fit-for-purpose and government agencies. The benefit of providing for compliance advice in legislation is that the approving body can legitimately take it into account when assessing an application, but, because it is not mandatory, warranted departures are also acceptable.

³ Electronic RUC management systems are an emerging area in telematics and as such the technology is evolving quite rapidly. Outcome-based standards are favoured over a more prescriptive approach because of the incentives for increased innovation and competition in the market, both of which would benefit transport operators. The aim is to have several providers developing different solutions but producing the same outcomes.

36. A code of practice could be developed and maintained with the assistance of an independent third party such as Standards New Zealand. Any costs incurred in the development of a code of practice are unlikely to exceed \$300,000 and would be funded from the NZ Transport Agency or the Ministry's operating budgets.

37. The Ministry favours this option.

Option two: Prescribe standards through compulsory regulation

38. Option two involves the government prescribing, in regulation, a set of common standards to be followed by all providers. A provision in the primary legislation would be needed in order to make regulations for the setting of standards.

39. Standards prescribed in this way are subject to all the traditional checks and balances of a regulation and would be drafted by the Parliamentary Counsel Office and published in the Statutory Regulation Series.

40. Setting standards in law would provide industry with a much higher level of certainty in respect of system requirements, though this is also likely to result in more detailed provisions in order to satisfy the needs of the courts, at the expense of flexibility and adaptability. There is a risk of regulation imposing higher costs than necessary. It is also not clear how feasible or cost effective it is to develop standards of this type in New Zealand.

41. The cost of developing standards under this option could be slightly more than option one but is still not expected to exceed \$300,000 and would also come out of transport agency operating budgets.

42. The Ministry considers that it is preferable to adopt a light handed approach to standards and considers this option to be excessive for a non-binding regime. Importantly, given the rate of innovation and change, there may be a need to constantly amend the regulations to overcome problems with fixed requirements.

Consultation

43. The following government agencies were consulted about these proposals: the NZ Transport Agency, the Treasury, the Ministry of Justice, the New Zealand Police, the Department of Labour, the Ministry of Economic Development and the Office of the Privacy Commissioner. The Department of the Prime Minister and Cabinet was informed of this paper.

Conclusion and recommendations

44. In two out of three proposals the Ministry considers that there is only one feasible alternative to the status quo that would achieve the objectives stated in this RIS. Legislative provisions are necessary to implement each of the proposals.

45. The Ministry recommends that new RUC legislation provides for:

- one application and approval process for electronic system providers
- the consistent and transparent management of RUC information held by an electronic system provider
- the ability of the Chief Executive to issue a code of practice in order to provide guidance to industry in meeting the fit-for-purpose criterion.

Implementation

46. The implementation of a regulatory framework for the electronic management of RUC will follow the passage of new RUC legislation.
[withheld]

47. Any existing legal arrangements with electronic system providers will be preserved until they expire, at which time they will be replaced with a new approval.

Arrangements for monitoring evaluation and review

48. The Ministry is putting in place arrangements to monitor the uptake of electronic systems and the impact on Crown revenue, compliance, and other RUC payment channels. The Ministry will provide six monthly reports to the Minister of Transport.

49. The Ministry will also monitor the effectiveness of the code of practice through feedback from industry and the NZ Transport Agency.