

12 February 2021

OC210080

Hon Michael Wood
Minister of Transport

Action required by:
Monday, 1 March 2021

PROPOSED AMENDMENTS TO THE ROAD USER CHARGES LEGISLATION TO IMPROVE THE ROAD USER CHARGES SYSTEM

Purpose

1. To provide you with advice on a range of potential changes to the Road User Charges Act 2012 (the RUC Act) and its associated regulations to help improve the operation and administration of the Road User Charges (RUC) system.
2. It asks that you agree that these potential changes be publicly consulted on at the same time as the changes to promote the uptake of low emissions vehicles, set out in the separate companion briefing [OC201018 refers].

Key points

- We have provided you with a separate briefing on potential changes to the RUC Act that would seek to increase the uptake of low emission vehicles [OC201018 refers]. If changes to the RUC Act are to be made then there are a range of other potential amendments that could be considered at the same time. These additional changes would:
 - simplify and improve the general operation of the RUC system
 - improve the ability of Waka Kotahi the New Zealand Transport Agency (Waka Kotahi) to administer the RUC Act.
- The proposed changes include those that have been identified in past evaluations and respond to developments in technology since the last major amendments to the RUC Act in 2012. Most of the changes are technical and only of interest to those directly affected.
- The proposal to remove the requirement for the display of a paper RUC licence for light vehicles is likely to be of the greatest public interest. Other proposed changes, including transitioning CNG and LPG powered vehicles to RUC, may also receive attention from parts of the community.
- The paper recommends these further matters be consulted on at the same time as the potential changes relating to low carbon fuels.

Recommendations

3. We recommend you:

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| 1. | agree that the Ministry prepares a Cabinet paper seeking agreement to publicly consult on amendments to the RUC Act and its regulations | Yes / No |
| 2. | agree that this consultation should occur through a discussion document | Yes / No |
| 3. | agree that the consultation should take place as part consultation on a wider package of potential amendments to the RUC legislation to promote the uptake of low emissions vehicles [OC201018 refers] | Yes / No |
| 4. | agree the discussion document should consult on the following changes to RUC legislation to improve its implementation and administration by: | |
| 4.1. | addressing concerns from the road transport sector with over-weight permits | Yes / No |
| 4.2. | removing the requirement for light vehicles to display RUC licences in order to show compliance and that compliance instead be confirmed by access to a publicly accessible on-line database | Yes / No |
| 4.3. | enabling the purchase of RUC licences for distances of less than 1,000 km | Yes / No |
| 4.4. | clarifying the definition of an electric vehicle to remove a potential loophole where may vehicles have minor modifications merely to obtain a RUC exemption | Yes / No |
| 4.5. | removing fuel excise duty from CNG and LPG and requiring the few thousand remaining road vehicles that use these fuels to pay RUC | Yes / No |
| 5. | agree the discussion document should consult on the following proposals to improve the administration of the RUC Act by: | |
| 5.1. | clarifying requirements for when weight-based records must be kept and retained by vehicle operators. | Yes / No |
| 5.2. | replicating provisions found in similar legislation to enable Waka Kotahi to access third party records to determine compliance of vehicle operators with the RUC Act in specified circumstances | Yes / No |
| 5.3. | clarifying the requirements for electronic RUC (eRUC) Electronic Service Providers to provide advice to Waka Kotahi regarding non-payment of RUC from their clients | Yes / No |
| 5.4. | clarifying the requirements around the display of RUC licences on a heavy vehicle using an eRUC device | Yes / No |
| 5.5. | reducing Waka Kotahi's costs for the independent reviews of RUC assessments, while ensuring that independence of these reviews is maintained | Yes / No |
| 5.6. | enabling the 20 day time limit for review of a RUC assessment to be extended | Yes / No |

5.7. enabling Waka Kotahi to use the RUC rate that was in place at the time an underpayment was alleged to have occurred when assessing unpaid RUC Yes / No

Withheld to protect personal privacy



Manager, Demand Management and Revenue

..12/02/2021.

Hon Michael Wood
Minister of Transport

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- Minister's office to complete:
- Approved
 - Declined
 - Seen by Minister
 - Not seen by Minister
 - Overtaken by events

Comments

Contacts

Name	Telephone	First contact
Marian Willberg, Manager, Demand Management and Revenue	[Redacted]	
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TE MANATŪ WAKA MINISTRY OF TRANSPORT
PROMPTLY RELEASED BY

PROPOSED AMENDMENTS TO THE ROAD USER CHARGES LEGISLATION TO IMPROVE THE ROAD USER CHARGES SYSTEM

Background

- 1 If amendments to the RUC Act are being considered as part of a package to promote the uptake of vehicles using low carbon fuels, then there are opportunities to also incorporate unrelated amendments that would improve the operation of the existing RUC system. In particular these changes would take into account developments in technology since the last major legislative amendments in 2012. Some of the changes proposed below respond to recommendations from external evaluations of the RUC Act commissioned by the Ministry since the 2012 reforms. The most recent of these evaluations was published in late 2016¹. Recommendations from the reports have not been able to be considered until now and this is the first opportunity to publicly consult on options to address the report's major recommendations.
- 2 Many of the changes proposed below are technical and not likely to be controversial, but some (for example, the removal of the requirement to display a RUC licence) will be of interest to the motoring public and may draw some attention. Some of the proposals require more work to finalise specific preferred options and this would need to be done in cooperation with industry stakeholders before final recommendations for amendments are made.
- 3 As with the proposals in the companion briefing on potential changes to the RUC Act that would seek to increase the uptake of low emission vehicles [OC201018 refers], you are being asked to agree that these matters be consulted on through a discussion document. We are not proposing to proceed to the stage of developing draft legislation at this time. Any proposals to amend RUC legislation arising from this consultation would be referred back to Cabinet for agreement in 2022 as part of the wider package of amendments.

Changes to Simplify the RUC system

Reviewing the overweight permit regime in the RUC Act would address industry concerns

- 4 The 2016 evaluation of the RUC Act found that the most significant area of industry concern with the new Act's implementation was with the permit regime for overweight heavy vehicles. This regime enables heavy vehicles to carry greater weights than they are normally allowed and the evaluation found it was in need of review. The evaluation found:
 - 4.1 there was the risk of heavy vehicle operators paying less RUC for their vehicle weight than they were legally required due to difficulty of enforcement
 - 4.2 a lack of flexibility for heavy vehicle operators to change between vehicle types to match the weight permitted for particular journeys
 - 4.3 that weight bands for heavy RUC licences are too broad, resulting in operators paying more than they need to.

¹Evaluation of the New Road User Charges System Cycle Three Evaluation Report December 2016 Allen+Clarke

- 5 While these permits are a small part of the overall RUC system, the practical and financial implications of changes may be significant in the long-term for both the Government and the freight industry. The 2016 review did not identify if the concerns highlighted by stakeholders were with the legislation or the implementation by Waka Kotahi.

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| 6 | We propose to work with the road transport sector to develop a solution to long standing concerns with over-weight permits for heavy RUC vehicles. At this stage we do not have a preferred option for consultation. |
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Remove the requirement for light vehicle owners to display a RUC licence

- 7 Although electronic RUC (eRUC) devices are now relatively common in heavy vehicles, these commercially provided products are not usually cost effective for light vehicles, particularly those owned by private individuals. This means that virtually all light private vehicle owners must still manually purchase a paper RUC distance licence that must be posted to the owner (or printed at a local approved outlet if purchased in person) and then displayed on the windscreen of the vehicle. Manually purchasing, producing and distributing physical licences imposes a cost for both Waka Kotahi and the vehicle owner.
- 8 We propose to consult on removing the requirement for light vehicles to display a physical or digital licence. Not having to display a licence would make provision of RUC for light vehicles more cost effective and simple. In particular it would facilitate the purchase of a RUC licence using automated processes through a smartphone app or dedicated standalone device, but without the expense of a full eRUC device². Automating RUC purchase would remove one of the major inconveniences and sources of unintentional non-compliance with the current RUC system. There is no evidence that having to display a physical licence increases compliance.
- 9 If the requirement for light vehicles owners having to display or carry a label is removed, Waka Kotahi would be able to reduce the \$4.80 transaction fee currently charged for online RUC licence purchases to a level closer to that charged to eRUC providers of \$2.10, reflecting the reduced administrative costs. This would, in turn, reduce costs for motorists who are subject to the RUC system.
- 10 The option of purchasing RUC through any of the existing channels and the option of displaying a paper RUC licence on a vehicle would remain unchanged. Use of any electronic purchase mechanisms would remain optional, but use of these would be encouraged. We expect this proposal would receive public attention given that there are 800,000 light diesel vehicles that would be affected.
- 11 We do not propose to remove the requirements for heavy vehicles to display RUC licences as the legal issues are more complicated. As discussed below, we do propose to consult on minor changes to clarify and simplify requirements for heavy vehicles operators to display or carry licences.
- 12 NZ Police advises that Officers already have direct access to RUC payment information (as well as other information such as the payment status of a vehicle's

² eRUC is a legally defined term in the RUC Act. It has a specific set of requirements covering properties such as accuracy of distance measurement and requirements for data transmission. This new proposal is only intended to facilitate payment of conventional RUC at a reduced cost for light vehicles through electronic means.

licence ('rego')) in real time through their phones. Officers do not need to rely on the presence of a physical licence for proof of compliance.

- 13 If a physical licence is not required, formal compliance with the RUC system would instead be determined by records on the Waka Kotahi database. The primary means of RUC enforcement for light vehicles would remain through recording the odometer reading as part of the vehicle's Warrant of Fitness or Certificate of Fitness inspection. We would also expect Waka Kotahi (and other potential providers of RUC services) to make greater use of digital communications to remind vehicle owners of the need for payment.

- 14 We propose to consult on removing the requirement for light vehicles to display a RUC licence in the windscreen of their vehicle. Compliance would be determined by a publicly accessible record in a Waka Kotahi database. Consequential changes to offences and penalties relating to the display of the RUC licence would be made at the same time. We would also investigate if offences relating to the non-payment of RUC would need to be revised.

Removing the requirement to display other transport paper labels could also be considered

- 15 If it is agreed that the paper RUC licence does not need to be displayed as proof of payment, it would be appropriate to investigate whether to remove the requirement for other transport documents to be displayed in paper form. The most obvious is the vehicle licence (rego) label.
- 16 We will determine at the time legislation is drafted if changes can be made as part of an omnibus bill amending the RUC Act. If a change cannot be made through that Bill then a change could be made through a separate piece of legislation, such as the annual Regulatory Stewardship Amendment Bill following consultation under this process.

- 17 We propose to consult on whether to remove the requirement to display other land transport documents, such as the vehicle licence label, as part of the consultation on RUC reforms.

Allowing for the purchase of RUC licences in amounts less than 1,000 km

- 18 Although freight vehicles may regularly travel 1,000 km in a week, light diesel vehicles and older vehicles may take several months or even years to travel 1,000 km. As licences are now able to be printed on demand, or may not be required at all if the amendments proposed above are agreed, there is no obvious reason that RUC licences should only be purchased in units of 1,000 km. Having the option to purchase RUC in smaller amounts would help some road users with cash flow (particularly road users with lower incomes). This has been raised with Waka Kotahi as an area of concern by those who purchase RUC in a recent survey. It is also a regular subject of ministerial correspondence from owners of motor caravans.
- 19 We do not propose to change the fees charged by Waka Kotahi for purchase of RUC licences as part of this process. This would limit any risks from users making large numbers of small transactions.

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| 20 | We propose to consult on amending the RUC Act to allow the purchase RUC licences in units of less than 1,000 km. |
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Revising the definition of an electric vehicle (EV) may prevent future abuse of the exemption

- 21 The definition of an EV states that it should have a motive power wholly or partly derived from an external source of electricity. There is no definition that determines what 'partly' means in this context. There is a minor risk that a vehicle operator may seek to make relatively simple and low cost modifications to their vehicle to enable them to travel short distances (a few hundred metres) on electric power. This can be done using the vehicle's starter motor to drive the wheels. Such changes would not be expected to have any practical effect on CO₂ emission when in use and so should not be encouraged.
- 22 There has not been an example of this type of modification occurring to date. However, it seems prudent to clarify the requirement. The longer a RUC exemption is in place the greater the value to a vehicle owner to seek to take advantage of the exemption.
- 23 This potential type of modification is most likely to be made as an aftermarket conversion and so it may be appropriate to establish a test to determine whether an individual vehicle is actually an EV for the purposes of RUC. There are a range of options that could be considered, such as a simple requirement of being able to drive a set distance, or minimum kWh capacity for a battery, but we do not have a preferred option at this time.

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| 24 | We propose to consult on whether the definition of EV needs to be revised to ensure that vehicle modifications are not being made with the primary intent of avoiding RUC |
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Removing fuel excise duty (FED) from CNG and LPG which are now minor transport fuels and moving the remaining vehicles to the RUC system would significantly reduce administration costs for some parties

- 25 Under current arrangements, FED is collected on the sale of all compressed natural gas and liquefied petroleum gas (CNG and LPG) sold in New Zealand. The FED paid for amounts of CNG or LPG that are not used for road transport is then refunded. While this arrangement was appropriate when CNG and LPG were major transport fuels, there are now less than 2,000 active vehicles using these fuels. This means that more than 98 percent of FED on LPG should be refunded as almost all LPG is now used for non-road transport uses³. We are not aware of any ongoing use of CNG for motor vehicles and 100 percent of the FED is refunded. The current revenue collection system imposes disproportionate compliance costs (estimated to be several million dollars per year) for collecting and then refunding FED for both the CNG and LPG import and distribution sector and Waka Kotahi.
- 26 Rather than continuing the current collection of FED from CNG and LPG it would be useful to consider whether to remove FED from these fuels and instead charge the remaining road users RUC.

³ In practice, the amount refunded is less than 98 percent as not all refunds are claimed.

- 27 One of the obstacles to moving the remaining CNG and LPG vehicles to paying RUC is that most of the remaining vehicles are LPG-petrol⁴ dual fuel vehicles. These would then be required to pay both RUC and FED. As with the plug-in hybrid electric vehicles (PHEV's) discussed in the companion paper [OC201018 refers], this can be addressed through the owner applying for a FED refund for any petrol used. However, if a power to charge a reduced rate of RUC, reflecting any FED paid is established, it would also enable the legislation to charge a lower RUC rate for dual fuel CNG and LPG vehicles.
- 28 At present the rate of FED on CNG and LPG is equivalent to around 10 cents per litre, compared to 70 cents per litre (incl GST) for petrol. Being able to set a lower RUC rate for the remaining CNG and LPG users may also be required to retain some equivalence with the current level of payment. There is no climate change benefit from the use of CNG or LPG as transport fuels, so (and unlike with EVs for example) this is not a reason to continue a lower level of charge for these remaining vehicles.
- 29 This idea has not been discussed with CNG and LPG vehicle owners or companies selling bulk gases. We would expect the proposal to be supported by retailers of bulk gases, but not by the owners of the remaining CNG and LPG vehicles if their operating costs increased. Consultation would be required to address this and assess any changes in costs.
- 30 We propose to consult on whether to remove FED from CNG and LPG and to require the remaining road vehicles that use these fuels to pay RUC.

Changes to improve the administration of the RUC System

We would like to consult on a number of potential changes intended to improve Waka Kotahi's ability to administer the RUC Act

- 31 We propose to consult on a series of potential changes to strengthen the administration of the RUC legislation by Waka Kotahi as the RUC collector. While some of these potential changes are minor, some could pose minor costs for transport operators and others who may potentially be affected. Further analysis and consultation is needed on these proposals before final recommendations are made to you for legislative change.

Clarifying the requirements that certain persons must make and retain certain records would assist Waka Kotahi's ability to access weight records for a heavy vehicle

- 32 Section 65 of the RUC Act requires that certain persons (namely transport service licence holders) make and retain certain records. Waka Kotahi's view is that operators are currently required to keep and retain information and this includes weight information. However, the provision could be made clearer to confirm that where weight-based information exists, for example, a document from a weighbridge, it is required to be retained by the operator.

- 33 We propose to consult on an amendment to clarify requirements for weight-based records to be kept and retained by vehicle operators, where the records exist.

⁴ CNG-petrol vehicles were once common, but we are not aware of any that are still operating.

Clarifying the provisions relating to access to records held by third parties would enable Waka Kotahi to confirm that vehicles are making correct RUC payments for their weight

- 34 Section 67 of the RUC Act enables Waka Kotahi to access certain records held by third parties (non-vehicle operators) that have serviced, maintained, supplied or contracted for the use of the vehicle. The section could be made clearer to confirm that Waka Kotahi can access records from third parties that have encountered the vehicle. A specific concern of Waka Kotahi relates to access to weighbridge records held by third parties.
- 35 A way to resolve any ambiguity is to provide Waka Kotahi the power to require third parties to produce documents necessary for the purposes of administering the RUC system. Such provision could be modelled on powers of other comparable regulators (for example, the Financial Markets Authority).

36 We propose to consult on an amendment to clarify Waka Kotahi's ability to access third party records to determine compliance of vehicle operators with the RUC Act.
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Creating a requirement for RUC Electronic Service Providers (ESPs) to notify Waka Kotahi of potential non-compliance with the RUC system would help prevent operators from delaying RUC payments and subsequently incurring debt

- 37 Waka Kotahi has advised there have been compliance issues with customers of RUC ESPs manipulating their auto purchase option to delay RUC payments. There are also issues with non-compliant customers having their contracts cancelled by an ESP without retrieving the electronic distance recorder and not purchasing paper-based RUC. There is no specific requirement for ESPs to notify Waka Kotahi about changes to payment arrangements, potentially allowing customers to incur a substantial amount of unpaid RUC debt.
- 38 We propose to consult on an option to create a specific requirement on ESPs to notify changes to the status of RUC payments to Waka Kotahi. This would be comparable to existing requirements on ESPs to report other key details, such as suspected tampering with an eRUC device, to Waka Kotahi.

39 We propose to consult on an amendment to require ESPs to notify Waka Kotahi when their clients cease payment of RUC through the ESP's eRUC services.

Clarifying the requirements around the display of heavy vehicle eRUC licences could reduce the uncertainty and potentially enable greater innovation

- 40 At present the RUC legislation does not clearly distinguish between obligations for heavy vehicles to ensure that the electronic distance measuring device⁵ (known as an ehubo) is permanently attached to the vehicle, with the requirements around display of the eRUC licence. This is partly because when the requirements were developed, eRUC devices had both data collection and display functions. However, since the Act was drafted, there has been a move away from requiring permanent display of RUC licences on the windscreen to allowing them to be 'carried' and displayed on request. As a result there is a lack of clarity on how to enable the RUC licence to be displayed electronically and separately from the ehubo, which is mounted in the vehicle. Clearly

⁵ Heavy RUC vehicles are required to have a permanently mounted external distance measuring device known as a hubodometer or 'hubo', or in the case of eRUC, an 'ehubo'.

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separating the requirements around display of eRUC licences from the requirements for the ehubo measurement device would potentially enable greater innovation in eRUC technology.

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| 41 | We propose to consult on clarifications to the requirements around the display of RUC licences on a vehicle using an eRUC device. |
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Reducing the cost of independent review of RUC assessments to Waka Kotahi would assist with its enforcement of the RUC Act

- 42 When a vehicle operator is issued an assessment by Waka Kotahi for unpaid distance, the vehicle operator may apply for a review of the assessment under section 55 of the RUC Act.
- 43 Waka Kotahi must then arrange for an appropriately qualified independent person to review the assessment. Waka Kotahi currently contracts EY to review assessments that relate to calculations (mainly relating to light vehicles) and contracts barristers to review more complex assessments (for example, that may raise issues of law). Following an independent review, the assessment may be appealed to the District Court.
- 44 Waka Kotahi is concerned at the cost of the independent reviews of assessments, which can be between \$1,500 and \$2,000 a day depending on the level of case complexity. If a barrister is involved, the overall cost can be between \$5,000 and \$10,000. Waka Kotahi is concerned that the cost of the review is often greater than the value of the assessment. Waka Kotahi also suspects some operators use these assessments to cause delays, allowing them to either liquidate the affected company, or have Waka Kotahi cancel its assessment. Waka Kotahi advises of the 635 independent reviews completed between October 2018 and 2020, only one invoice was amended as a result of the independent reviews – an increase of \$10.09.

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| 45 | We propose to consult on an amendment that would seek to reduce Waka Kotahi's costs for independent reviews of RUC assessments, while ensuring that the independence of reviews is maintained. |
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Extending an operator's time to request an independent review of an assessment would benefit assessment applicants

- 46 Once Waka Kotahi has issued an assessment for unpaid RUC, section 53 of the RUC Act requires that the person makes an application for an independent review of the assessment within 20 working days. Waka Kotahi cannot provide an extension to this period or exercise discretion to consider the circumstances of the owner or operator, or allow the person to apply for a review after the 20 working day time period.

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| 47 | We propose to consult on an option to enable extensions to the 20 day time limit to apply for an independent review of a RUC assessment. |
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Allowing Waka Kotahi to use historic RUC rates when carrying out an assessment would lead to assessments that are fairer to those required to pay

- 48 The RUC legislation requires Waka Kotahi to use the current RUC rate when assessing any unpaid RUC, even if the underpayment occurred when the rate was

lower. This is likely to be a concern for assessments occurring immediately before an increase in RUC rates.

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| 49 | We propose to consult on an option to enable Waka Kotahi to use the rate that was in place at the time the underpayment was alleged to have occurred when issuing an assessment for unpaid RUC. |
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CONCLUSIONS AND NEXT STEPS

- 50 As with the companion briefing that proposes measures that could increase the uptake of low emission vehicles, we have not discussed the proposals in this paper with stakeholders outside of Government.
- 51 Should you agree, officials will include these items for consultation in the discussion document being proposed in the companion paper. Officials will also include these items in the Cabinet paper, which you will take to Cabinet in July 2021 asking for approval to release the discussion document.
- 52 Once Cabinet has approved the release of the discussion document, we will work with Waka Kotahi to publicly consult on the changes. We would then return to Cabinet in 2022 to seek Cabinet's agreement to a final package of recommendations for changes to the RUC Act (and its regulations as necessary) once consultation was complete.

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