

Chair
Cabinet Economic Growth and Infrastructure Committee

ROAD USER CHARGES: A REGULATORY FRAMEWORK FOR ELECTRONIC MANAGEMENT SYSTEMS

Proposal

1. The paper seeks agreement to include provisions in a Road User Charges Bill 2010 (the RUC Bill) that will allow for:
 - 1.1. the implementation of an improved regulatory framework for the electronic management of road user charges (RUC)
 - 1.2. a re-allocation of responsibility for some administrative decisions about the RUC system to more appropriate levels.
2. This paper is the fourth of five related Cabinet papers setting out proposals for new RUC legislation to replace the Road User Charges Act 1977 and the Road User Charges Regulations 1978.

Executive summary

3. The Road User Charges Regulations 1978 were amended in 2009 to allow for the use of electronic distance recorders and electronic display of RUC licences, as a voluntary alternative to mechanical hubodometers and paper RUC licences. While this was a necessary first step, RUC legislation needs further updating to ensure the successful introduction of this technology and ongoing administration of independent electronic system providers.
4. The 2009 amendments to the Road User Charges Regulations 1978 created a mixed governance structure for the issuing of RUC licences and approval of electronic distance recorders. Because an electronic system provider offers distance recording, licence issuing, and licence display services, any private sector company wanting to become an electronic system provider must obtain both an authorisation to issue RUC licences and approval of its electronic distance recording device before being able to offer these services to transport operators. It is possible to streamline this process by creating one composite application and approvals process for electronic system providers.
5. Electronic system providers carry out some administrative functions of the RUC system on behalf of their customers (transport operators) and act as a representative of the New Zealand Transport Agency for the issuing of RUC licences. Therefore, it is important that these agencies be monitored and audited to ensure compliance with the RUC legislation. The best way to do this is to introduce a statutory requirement for electronic system providers to keep certain information and provide it to government transport agencies.

6. Electronic distance recorders are approved by the Secretary for Transport (Chief Executive) on the basis that they are fit-for-purpose. This criterion could usefully be supported by material about acceptable solutions in order to assist industry with product development.
7. While updating the RUC legislation to better take account of modern technology, there is also an opportunity to rationalise some of the administrative processes associated with RUC by shifting the decision making responsibility from Parliament to either the Governor General or the Chief Executive.

Background

8. The 2009 Independent Review of the Road User Charging System (the Review) saw the use of electronic technology as key to updating and enhancing the RUC system. The Review considered that modern technology has the ability to deliver a cost effective RUC purchase and distance recording technology service, while contributing to a reduction in administration costs and supporting better alignment with business needs.
9. In September 2009, the Cabinet agreed to amend the Road User Charges Regulations 1978 [EGI Min (09) 19/6 refers] to provide for:
 - 9.1. approved electronic distance recorders to be used as an alternative to the mechanical hubodometer, on a voluntary basis
 - 9.2. the electronic display of RUC licences
 - 9.3. the Chief Executive to set conditions relating to device security
 - 9.4. approval of electronic distance recorders to be given by the Chief Executive.
10. The amended regulations came into force on 1 January 2010 and the first electronic distance recorders received approval on 23 February 2010.
11. Electronic distance recorders are available through privately owned companies referred to as electronic system providers. Transport operators who choose to sign up with an electronic system provider will have a secure, reliable and accurate electronic distance recording and positioning service, with the ability to purchase RUC licences online. Those licence details are then transmitted to the electronic distance recorder on the vehicle for electronic display.
12. There are currently 243 heavy vehicles¹ (out of a total population of 160,000) fitted with an electronic distance recorder.
13. Cabinet also noted that the Ministry of Transport and the New Zealand Transport Agency would investigate the feasibility of a post-payment RUC system based on on-road distance travelled. This proposal was recommended on the basis that the requirement to pre-pay adds to the compliance burden of the RUC system and places

¹ Trucks and trailers.

a strain on cash flow, as refunds or economic benefits from the outlay often come much later.

14. The advent of electronic distance recording has made post-payment of RUC a possibility. The Ministry of Transport, in conjunction with the New Zealand Transport Agency, is to further investigate the potential to offer post-payment as an incentive for the uptake of electronic RUC management systems.

Comment

15. The RUC system and its governing legislation was introduced in the late 1970's, at a time when administration was solely reliant on manual, paper-based processes. Although it has been subjected to minor adjustments over time (including during 2009 to enable the voluntary use of electronic distance recorders and electronic display of RUC licences) the current RUC legislation is not optimal for the successful introduction of modern technology and the administration of third party electronic system providers.

Becoming an electronic system provider

16. Under current legislative provisions², electronic distance recorders are governed by regulations, while the issuing of RUC licences is governed by the Road User Charges Act 1977. The mixed governance arrangements mean that a company looking to become an electronic system provider must first seek authorisation to be able to issue RUC licences, before applying to have a device approved as an electronic distance recorder. In both instances the applications may be approved on such terms and conditions as the Chief Executive or his/her delegate sees fit.
17. The dual application process provides scope for: duplication in assessment or testing of an electronic RUC system; ambiguity around the roles, responsibilities and objectives of the two processes; or for key terms and conditions to be repeated, conflicting, or not adequately covered by either approval.
18. I propose to provide in legislation a single application process that covers both the authority to issue RUC licences and electronic distance recorder approval.

Transitional implications

19. I propose to preserve any approvals granted under current RUC legislation prior to the passing of the RUC Bill. The existing arrangements will remain in force until they expire, at which point they will be replaced with a new approval.

Information held by electronic system providers

20. Electronic system providers³ will collect and store information in the course of providing electronic RUC services⁴. Some of this information is generated by a

² Regulation 6A of the Road User Charges Regulations 1978 and section 10(3)(b) of the Road User Charges Act 1977.

³ Currently referred to as electronic service providers in the Road User Charges Regulations 1978.

transport operator and some of it by the electronic system provider itself. Government agencies need access to RUC information⁵ to:

- 20.1. ensure the financial integrity of revenue collection through regular auditing of electronic system providers (the RUC system generates approximately \$880 million in revenue per annum)
 - 20.2. monitor transport operator compliance with RUC legislation
 - 20.3. assist transport research.
21. While transport operators' duties to produce RUC information are provided for in the Road User Charges Act 1977, there are no statutory provisions specifying electronic system providers' duties to keep information and the circumstances under which this information is provided to government transport agencies.
 22. The rules relating to the collection, retention, storage and use of RUC information held by electronic system providers are currently set out in two separate documents; a contract between the New Zealand Transport Agency and the electronic system provider authorising the issuing of RUC licences, and the terms and conditions of the electronic distance recorder approval imposed on the electronic system provider by the Chief Executive. Both of these documents are subject to a certain amount of negotiation prior to signing and there is potential for variation from provider to provider. I do not consider this approach optimal for the longer term.
 23. For reasons of consistency and transparency, I propose to include in the RUC Bill provisions specifying an electronic system providers duties concerning the collection, use and distribution of RUC information. This will ensure that all affected parties are clear about their own rights and duties, and the rights and duties of other participants in the system. All electronic system providers are, and will remain, subject to the Privacy Act 1993.
 24. The following paragraphs (25 to 40) set out the proposed information requirements for inclusion in the RUC Bill.

Provision of services

25. It is necessary for electronic system providers to collect, store and use RUC information in the provision of RUC services and it is appropriate that a transport operator has access to all RUC information held by an electronic system provider on their behalf.

⁴ RUC services means all of the services the electronic system provider must provide and all the obligations the electronic system provider must observe, as set out in the Road User Charges Act 1977 and any agreement with the Chief Executive.

⁵ RUC information means information that has been generated or collected for any purpose relating to the provision of RUC services (eg, distance travelled and location of the vehicle, information relating to the purchase of RUC licences, information on faults or tamper attempts on an electronic distance recorder and any other documentation considered necessary for the management of the system).

26. An electronic system provider is able to provide commercial services⁶ to a transport operator in addition to RUC services. An electronic system provider will need to clearly identify what information is RUC information and keep it separate from any commercial information that it may hold. This is so that the New Zealand Transport Agency can have easy access to RUC information and electronic system providers will not be at risk of inadvertently supplying information to the New Zealand Transport Agency that is not governed by RUC legislation.

Electronic system providers' obligations to keep records

27. Electronic system providers will be obliged to keep RUC information collected (including records of events or circumstances under which an electronic distance recorder or associated back office system is not operating normally) and ensure that records are organised in a way which allows the record to be conveniently and properly audited.
28. Electronic system providers will also be required to take reasonable steps to protect RUC information collected against unauthorised access, unauthorised use, misuse, loss, modification or unauthorised disclosure.
29. Failure to keep information will be an offence. This proposal is discussed in the accompanying Cabinet paper entitled "Road user charges: Improving compliance".

Access to information for monitoring and audit

30. The Chief Executive requires the authority to inspect RUC information in order to audit and monitor the provision of RUC services.
31. I propose that the legislation impose a duty on electronic system providers to keep RUC information and produce it to the Chief Executive upon request. This power will be delegated to the New Zealand Transport Agency.
32. In order for the New Zealand Transport Agency to successfully monitor the compliance of transport operators using third party electronic systems, electronic system providers will be required to inform the New Zealand Transport Agency if they are aware that an electronic distance recorder has been tampered⁷ with or have reasonable grounds to suspect that an electronic distance recorder has been tampered with.
33. Where an electronic system provider has informed the New Zealand Transport Agency of actual or suspected tampering, the New Zealand Transport Agency needs access to electronic system providers records relating to that event.

⁶ Commercial services means any telematics services or location-based monitoring services, including associated communication services, that are provided to the transport operator by an electronic system provider which are not RUC services

⁷ Tamper means conduct which is intended to prevent a system from functioning properly.

34. In order to ensure continued compliance with the RUC legislation, and the conditions of any approval granted under RUC legislation, electronic system providers will be subject to regular audits.
35. Where a transport operator utilises in-house technology to provide electronic RUC management to itself, there is potential for a conflict of interest and the organisation will need to be subject to special audit provisions.

Use of information for research

36. In providing RUC and commercial services, electronic system providers gather information about vehicle fleet movements. While I recognise this information may extend beyond RUC and belongs to third parties, aggregate information of this nature would usefully assist in transport policy development and network planning.
37. I therefore propose that an electronic system provider be required, upon request and at a reasonable cost, to provide the Ministry of Transport and the New Zealand Transport Agency with anonymous traffic or transport information, in a form approved by those agencies, to use or disclose as they see appropriate. The legislation will specify that the information will only be provided in aggregate form and will not identify or target operators or electronic system providers.

Supporting regulations

38. Other general provisions relating to the collection, storage and use of information held by an electronic system provider could usefully be provided for in legislation rather than terms and conditions set by the Chief Executive. Examples include the time period for storing data and roles and responsibilities relating to RUC information should an approval lapse or a system provider wishes to discontinue RUC services to a transport operator.
39. These miscellaneous provisions are of an administrative nature and would be better set by regulation rather than in primary legislation.
40. I therefore propose that the RUC Bill empowers the making of regulations governing information held by electronic system providers.

Measures to incentivise uptake of electronic RUC management systems

41. Officials are to investigate the potential to offer post-payment of RUC as an incentive for the uptake of RUC management systems. The legislation should contain a mechanism to enable, in the future, other payment methods including post-payment.

Standards

42. Current regulations enable the Chief Executive to approve an electronic distance recorder if he/she is satisfied that it is fit-for-purpose. At present, compliance with the fit-for-purpose criterion is being determined by using independent expert evaluations. This is a relatively subjective method of evaluation and the feedback from industry is that a fit-for-purpose criterion unsupported by practical compliance information is not helpful in terms of product development.

43. 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 [EGI Min (09)19/6 refers]. At present there is no legislative basis for these requirements.
44. I propose that the new RUC legislation enable the Chief Executive to issue compliance advice in the form of a code of practice by notice in the *Gazette*. A code of practice would exist outside legislation and establish standards, requirements, procedures or acceptable solutions to assist in complying with the fit-for-purpose requirement. A code of practice would be published on the New Zealand Transport Agency website.
45. In the interests of promoting innovation and competition in the market for electronic RUC management systems, the code of practice may not necessarily represent the only means of complying with the fit-for-purpose criterion and its use would not be mandatory.

Form of licences

46. Currently, the Road User Charges Act 1977 enables the Chief Executive to prescribe the colours of licences and labels, however, an Order in Council is required in order to change the prescribed form of a RUC licence.
47. I propose to permit the Chief Executive to prescribe the form of a RUC licence. I consider this to be the most efficient level at which to make decisions of this nature, which are of a purely administrative character.
48. In order to ensure an adequate level of publication, forms of licences approved by the Chief Executive will be notified in the *Gazette* and permanently available on the New Zealand Transport Agency's website and other educational material on RUC.

Licence display requirements

49. The Road User Charges Act 1977 currently contains a duty to display a RUC licence and detailed provisions regarding how the RUC licence must be displayed. Many of these provisions are out-of-date, provide very little flexibility, and are no longer practical. Although the duty would remain in the primary legislation, I propose that the detailed RUC licence display requirements be set out in regulations so that they may be more readily updated to reflect operational practices.
50. After consulting with my officials I will advise Cabinet on what licence display requirements should be included in the regulations, but in the meantime, I propose that the RUC Bill contain empowering provisions for those regulations and enable display requirements for different classes of vehicle and for electronic distance recorders.
51. One of the existing display requirements in the Road User Charges Act 1977 dictates that an electronic distance recorder be permanently affixed to the vehicle inside the cab. This mounting position is sometimes obscured or hard to access due to large bonnets, stone guards and angled windscreens, making it difficult for an enforcement officer to inspect the electronic distance recorder.

52. Therefore, I propose that the RUC Bill require that the driver of the vehicle manoeuvre or otherwise produce an electronic distance recorder, on demand, so that it may be inspected by an enforcement officer for the purpose of ascertaining compliance with the RUC legislation.

Approval of hubodometers

53. At the present time, hubodometers that are considered suitable for measuring distance for RUC purposes are prescribed by brand name in the Road User Charges Regulations 1978. This approach is not efficient, as prescribing hubodometers is a technical matter that does not need to involve Ministers and the Governor General. I therefore propose that the RUC Bill provide the Chief Executive with the power to approve hubodometers.
54. The brand name of every new hubodometer approved by the Chief Executive will be notified in the *Gazette* and a list of all approved hubodometers will be available on the New Zealand Transport Agency's website and in relevant publications.

Monitoring

55. I intend to monitor the introduction of electronic RUC management systems, and have asked the Ministry of Transport to provide me with six monthly reports about uptake and the impact on Crown revenue, compliance, and other RUC payment channels.

Consultation

56. The following government departments and agencies were consulted on this paper: the Treasury; the New Zealand Transport Agency; the New Zealand Police; Ministry of Economic Development; Department of Labour; Ministry of Justice and the Office of the Privacy Commissioner. The Department of the Prime Minister and Cabinet has been informed of this paper.

Financial implications

57. The provisions or powers recommended for inclusion in the RUC Bill do not impose a cost to government as no funding will be required from Vote Transport.

Human rights implications

58. There are no human rights implications arising from this paper.

Legislative implications

59. Additional statutory provisions or powers are required to implement the proposals outlined in this paper. [withheld]
60. The majority of the provisions would need to come into force at a later date as implementation time is needed. Regulations would come into force at the same time as a new Act.

Regulatory Impact Analysis requirements

61. A Regulatory Impact Statement has been prepared and is attached to this paper. The Regulatory Impact Statement was circulated as part of the departmental consultation.

Quality of impact analysis

62. A Principal Adviser in the Aviation and Maritime Group of the Ministry of Transport has reviewed the Regulatory Impact Statement and associated supporting material and confirms that the principles of the Code of Good Regulatory Practice and the Regulatory Impact Analysis requirements have been complied with.

Consistency with Government Statement on Regulation

63. I have considered the analysis and advice of my officials, as summarised in the attached Regulatory Impact Statement and I am satisfied that the regulatory proposals recommended in this paper:
- 63.1. are in the public interest
 - 63.2. will deliver the highest net benefits of the practical options available
 - 63.3. are consistent with our commitments in the government statement “Better Regulation, Less Regulation”.

Publicity

64. I intend to issue a media statement announcing a package of reforms that will simplify and modernise the RUC system.

Recommendations

65. I recommend that the Committee:
- 1) **note** that this is the fourth of five related Cabinet papers setting out proposals for new road user charges legislation to replace the Road User Charges Act 1977 and Road User Charges Regulations 1978;
 - 2) **[withheld]**;
 - 3) **agree** that the Road User Charges Bill 2010 and associated regulations enable one application process for electronic system providers that covers both the authority to issue road user charges licences and electronic distance recorder approval;
 - 4) **agree** that the Road User Charges Bill 2010:
 - (a) specify the duties of an electronic system provider in relation to the collection, storage, use and disclosure of road user charges information it holds

- (b) provide the Secretary for Transport with the authority to request and inspect RUC information held by an electronic system provider in order to audit and monitor the provision of RUC services
 - (c) require an electronic system provider to provide the Ministry of Transport and the New Zealand Transport Agency, on request and at reasonable cost, anonymous and aggregated traffic or transport information, in a form approved by those agencies, to use or disclose as they see fit
 - (d) empower the making of supporting regulations in relation to the collection, storage use and disclosure of road user charges information held by electronic system providers;
- 5) **agree** that the Road User Charges Bill 2010: include empowering provisions to enable the Secretary for Transport to issue a code of practice to assist industry in complying with the fit-for purpose criterion in relation to electronic distance recorders;
- 6) **agree** that the Road User Charges Bill 2010:
 - (a) include empowering provisions to enable the Secretary for Transport to prescribe the form of a road user charges licence;
 - (b) provide regulation making powers for the purpose of prescribing display requirements for road user charges licences;
 - (c) require a driver of a vehicle to manoeuvre or otherwise produce an electronic distance recorder, on demand, for inspection by an enforcement officer;
 - (d) provide empowering provisions to enable the Secretary for Transport to approve hubodometers;
- 7) **note** that the Ministry of Transport and the New Zealand Transport Agency will investigate the possibility of post-payment of road user charges being used as an incentive for the uptake of electronic road user charges management systems;
- 8) **agree** that the road user charges legislation provide a mechanism to enable other payment methods in the future including post-payment;
- 9) **invite** the Minister of Transport to issue drafting instructions to Parliamentary Counsel to prepare legislation to give effect to recommendations 2 to 5 above;
- 10) **note** that I have asked my officials to provide me with regular monitoring reports on the introduction of electronic road user charges management systems

- 11) **note** that the Ministry of Transport, in conjunction with the New Zealand Transport Agency, is to further investigate the potential to offer post-payment as an incentive for the uptake of electronic RUC management systems.

Hon Steven Joyce
Minister of Transport

Dated: _____