

## **Explanatory Memorandum to the Cycle Racing on Highways (Amendment) (Wales) Regulations 2015**

This Explanatory Memorandum has been prepared by the Transport Directorate, within the department for Economy, Science and Transport, and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1

### **Minister's Declaration**

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Cycle Racing on Highways (Amendment) (Wales) Regulations 2015. I am satisfied that the benefits outweigh any costs.

Edwina Hart AM MBE CStJ  
10 March 2015

## **1. Description**

The purpose of the Amendment Regulations is to update the 1960 Regulations to bring them in line with current road conditions and modern approaches to public and competitor safety. We propose moving from an approach to race authorisation based on the numbers of competitors taking part and the length of the route on public roads, to a risk assessment based approach to race authorisation.

## **2. Matters of special interest to the Constitutional and Legislative Affairs Committee**

There are no matters of special interest to the Constitutional and Legislative Affairs Committee.

## **3. Legislative background**

Section 31 of the Road Traffic Act 1988 (“the 1988 Act”) makes it an offence for an individual to promote or participate in a cycle race unless it has been authorised or conducted in accordance with any conditions imposed by or under regulations. The Secretary of State made such regulations in the form of the 1960 Regulations, which provide additional rules on the approval of cycle races and conditions that may be imposed.

The 1960 Regulations were amended in 1963, 1980, 1988 and 1995. All these amendment Regulations addressed 5(1)(a)(i), and were amendments to the number of competitors in an authorised race.

These Regulations relate to authorisation and marshalling of an event and do not cover the requirement for road closures. Any events requiring road closures require temporary traffic regulation orders for road closures, under Section 16A of the Road Traffic Regulation Act 1984.

The powers under section 31 of the 1988 Act were transferred to the National Assembly for Wales by the National Assembly for Wales (Transfer of Functions) Order 1999. These functions are vested with the Welsh Ministers by virtue of section 162 of, and paragraph 30 of Schedule 11 to, the Government of Wales Act 2006.

The Regulations follow the Assembly’s negative procedure.

#### **4. Purpose & intended effect of the legislation**

Cycling events held on the highway can be grouped into four separate disciplines: Cycle Road Racing, Time Trials, Sportives and Triathlons / multi-event races, each of which presents challenges to police and other authorities. The number of these cycling events is increasing as public interest increases and the sport flourishes.

The Regulations governing how cycle road racing and time trials are run were originally written in 1960. The 1960 Regulations have not been substantially updated since 1960, though Amendment Regulations have been made in the past to revise the numbers permitted to take part in a race. The other Regulations governing these activities are now more than fifty years old and they no longer reflect current road and traffic conditions nor the substantial development in transport safety measures. British Cycling proposed amendments to these regulations to reflect these changes, which were then consulted upon by the Department for Transport and subsequently the Welsh Government.

The consultation sought views on amending the Regulations to introduce a presumption that cycle racing on the road is an activity that should be permitted by the authorising body on the condition that race organisers follow relevant rules, and act to mitigate risks appropriately.

The amendments to the current Regulations shift emphasis from the imposition of prescribed conditions to a position where planned events are authorised on the basis of risk assessment and imposition of appropriate conditions to mitigate any risk. We propose making the following changes to the 1960 Regulations to enact this.

The following cycling events, which are fairly recent developments in the sport, are not included in the Regulations.

- Sportives - mass participation events, often with thousands of participants, with participants ranging from those with a high level of fitness and professionalism, the amateur enthusiast and families and children. Sportives are a relatively new phenomenon increasing in popularity, usually operated by businesses for profit. Currently there is no obligation for organisers to limit the events and introduce conditions such as field size, risk assessment, course selection or calendar coordination. There are also large scale mountain bike events (generally referred to as enduros) which are run on a similar format and these often use road sections for the start and any connections between off road sections.

- Triathlons or other multi discipline events with a cycle leg. A triathlon is a multi discipline event with swimming, cycling and running in that order. The cycling element is often in the form of a road race or time trial (but has not been formally defined as either). There are other multi discipline events including duathlons and other adventure racing including a wider range of other activities.

## **5. Consultation**

Details of the consultation are set in the Regulatory Impact Assessment.

## **PART 2 – REGULATORY IMPACT ASSESSMENT**

### **Options**

#### Option 1 - Do Nothing

There is no specific requirement to change the 1960 Regulations. The proposals to amend the Regulations are not being considered in response to a specific incident. There is therefore the option to not make any changes, and continue under the current regime.

#### Option 2 – update Regulations to remove unnecessarily restricted criteria

The 1960 Regulations contain some criteria for races that are unnecessarily restrictive of the routes that races could run, without any clear justification in terms of safety or proper management. We have the option to make the following amendments to reduce these restrictions:

##### ***Reg. 5(1)(a)(iii)***

*“Where the route to be followed by a competitor is such that he must while on the highway pass a point on that highway at least twice (whether in the same or a different direction), the length of the route which he has to follow after passing that point at any time until he next passes it again, must not be less than ten miles;”*

We have the option of amending this Regulation to state a different length of five miles.

##### ***Reg. 5(1)(a)(iv)***

*“Where any length of the route is comprised of any public highway on which a speed limit of 40 mph or less is imposed by or under any enactment, that length must not exceed one mile and a half and no part of it must lie within three miles, measured along the route, of any part of any other such length;”*

We have the option of removing this Regulation from the set.

#### Option 3 – update Regulations to take a risk management approach to authorised events

At the moment, races are authorised on a numbers basis. We could change the following Regulation to create a risk based approach to race regulation.

**Reg. 5(1)(a)(i)**

*“The number of competitors must not exceed:*

- (a) In two, not more than two, races selected in any one year by the British Cycling Federation – 100,*
- (b) in the case of any race not promoted by virtue of sub-paragraph (a) above, - 80.”*

An organiser of an event would compile a risk assessment prior to the event. The risk assessment would need to consider both the risks for those taking part in the event, and the risks for those who may be affected (such as spectators, other road users and people in the vicinity). The maximum number of competitors that can compete in any particular event would need to form part of the risk assessment. The risk assessment would also need to set out what actions would be taken to mitigate these risks. These would be actions such as road closures, marshalling arrangements, publicity/ public communication activities, restrictions on times/ routes/ number or standard of entrants.

The Chief Officer can then consider the risk assessment and determine whether, in their opinion: the risk assessment indicates that the arrangements for the particular event are suitable for the event to proceed, and the mitigating actions are appropriate to bring the risk of the event to an acceptable level. The Chief Officer and the organiser may wish to work together to produce a mutually agreeable risk assessment (including mitigating actions). The Chief Officer may also use the risk assessment and mitigating actions to inform the conditions for the event to take place (as set out in Regulation 8(1)).

Option 4 – repeal the Regulations entirely and replace with new regulations for Cycle Racing on the Highways.

There is the option to repeal the existing regulations, and replace them with a new set of regulations that take a risk assessment based approach as a starting point.

**Option Analysis**

Option 1 – do nothing

The current Regulations regulate the following two disciplines:

- Cycle Races - mass start, competitive events, where riders compete over a defined course. The events must be authorised in advance and the Chief Officer of Police can impose conditions or refuse permission for events to go ahead under certain criteria.
- Time Trials - events where single riders travel a defined road course, starting at a minimum of one minute intervals. Organisers are only

required to notify the police of their intention to hold the event. Chief Officers have no jurisdiction to control or prevent an event taking place.

Doing nothing means that the regulatory regime will continue unchanged. The Regulations will not reflect developments in road traffic management and transport infrastructure.

The current regulatory regime takes a “time and numbers” approach to safety during races. Races that have a certain number of participants, are held within certain times and follow a route of a certain length are automatically considered to be safe. Modern approaches to safety, including road safety, use risk assessments to consider all the factors that might present a danger to competitors, marshals, spectators and bystanders.

There would be no change in costs for the police, Welsh Cycling, competitors or others if we were to do nothing. However, none of the benefits from modernising the Regulations would be generated either. Although British Cycling and Welsh Cycling do provide race guidance for organisers, without the Regulations the application is inconsistent and less standardised.

#### Option 2– update Regulations to remove unnecessarily restricted criteria

The two Regulations highlighted for change in Option 2 are Regulations where there is not clear evidence to suggest that they benefit road safety during cycle races.

Reg. 5(1)(a)(iii) sets a minimum length of 10 miles for an on-road race before it can re-pass the same point (either as a circuit or by turning round and coming back). This restricts the route that a cycle race could take, particularly for a race on a road that has been temporarily closed to other traffic. Relaxing this restriction could open new routes up for races, bringing racing to new places. It could also lead to less disruption for local residents and businesses, as races could take place on shorter lengths of road and thereby minimising the need for road closures.

However, no minimum length restriction could lead to events that are tightly concentrated into very short lengths of road, leading to disturbance and disruption for local people. We consider that 5 miles is a far more reasonable minimum length restriction. This would balance more flexibility in routes, against the possibility of disturbance for residents and neighbours.

Reg. 5(1)(a)(iv) is out of date. It was drafted in an era where urban sprawl was much less pronounced, and there were fewer measures in place to protect

spectators and bystanders. It does not reflect the modern convention that most residential areas have a default speed limit of 30mph. It is also confusing, and restricts the flexibility of the routes unnecessarily. Given the option of closing the roads to other traffic in order to hold an event, it then seems arbitrary to decide that a 40mph speed limit is the determinant of how much of the race should be on road or not. Repealing this Regulation would be in line with modern road safety practice.

Amending both of these Regulations would create more flexibility in determining routes. This would give more scope to amend routes on grounds of safety and/or numbers of competitors, and means that the most appropriate route can be considered on a case by case basis.

However, on its own, Option 2 does not fully meet the objectives sought in amending the Regulations. It contributes to the objectives, but it would not be sufficient to move to an approach that matches modern road safety management approaches on its own.

There should not be any direct cost to the police, British Cycling, race organisers, competitors or others as a result of making these changes to the Regulations. These proposals would give more flexibility in determining the route for a race, but would not affect any other procedures required for race authorisation.

### Option 3 – update Regulations to take a risk management approach to authorised events

Revising Reg. 5(1)(a)(i) to be based on a risk assessment approach for authorising races, rather than an approach based on numbers of competitors, would bring these Regulations in line with modern approaches to health and safety. The risk assessment could be carried out by the race promoter, or by a third party on behalf of the race promoter.

This change would acknowledge that larger field sizes can be safely used for races, subject to suitable risk assessment to assure safety of participants and the public. Similarly, it may be that the risk assessment for a particular course determines that a field size of less than 100 is appropriate. In essence the scale of events would be determined by discrete assessment rather than simple numbers.

Competitors could therefore be regulated in a flexible manner based on safety considerations, route geography, marshalling and policing. In this way a successful and safe event with a large field size could be allowed in areas where road conditions indicate it would work. It also means that races of 100

competitors or fewer are not automatically considered to be safe, and the discrete factors that affect safety can be considered properly.

This option goes a significant way to achieving the outcomes sought in making changes to the Regulations. However, responding to the risk assessment process would still be constrained by some unnecessary restrictions on the routes that could be taken (see option 2).

This option could be strengthened by amending Reg. 5(1)(b):

*“the promoter of the race, not less than twenty-eight days next before the day on which the race is to be held, or if it is to be held on more than one day, the day on which the race is to begin, gives the appropriate officer of police in writing notice of the proposal to hold the race and the like particulars with respect to the race as are required by subparagraphs (a) to (e) of paragraph (1) of Regulation 3 to be given with respect to a proposed time trial being:-“*

We have the option of adding an additional provision, that if the police impose conditions for a race, the reason(s) should be provided in writing to the organisers and British Cycling within five working days. This would provide a clear link between the risk assessment and the road conditions.

This proposal might slightly increase costs for the police, due to the requirement to respond within a certain time period. However, empowered marshals are being used at certain events which reduce the need for significant investment of police resources. In their consultation response, the Association of Chief Police Officers felt that “overall the new legislation is less resource intensive” for the police service, as the amended Regulations would “ensure partnership working to increase safety for events, alleviate congestion and disorder and ultimately reduce the cost to the police forces”.

The proposals might also increase costs for race organisers. This cost under the current system would be the time and expense required to compile and consider a risk assessment. The risk assessment may then lead to additional costs for race organisers in some circumstances, if the mitigating measures identified within the risk assessment come at a cost. For larger races on more complex courses, especially those involving road closures, risks assessments will often be done already for insurance purposes. However, this proposal would extend to smaller-scale races, which might not have been required to carry out a risk assessment previously. We anticipate that the risk assessment would be proportionate to the course of the race, so the additional cost that the risk assessment represents would not be disproportionate.

The cost of a risk assessment is normally the volunteer organiser’s time and associated expenses. This is approximately one working day and £30 - £50

petrol (depending on the location and nature of the course). In many cases the costs have been absorbed by the organiser, or entry fees paid by competitors, or sponsorship funding may have covered these costs.

However, to improve the overall standard and consistency of risk assessment, British Cycling is just embarking on a project to centralise the production of risk assessments. The intention is that risk assessments in the future will be carried out by accredited risk assessors who will be part-time employees of British Cycling. This work will begin in early 2015. Welsh Cycling estimates that it will take 2 - 3 working days to produce a risk assessment to the new higher standard, depending on the nature of the course. Based on this, the cost per risk assessment will be in the range £400 - £600 (including salary and expenses). These costs do not include the general overheads, national insurance and pension costs of these posts to British Cycling. On costs would typically be about 25-30% of the risk assessors' salary. These costs are not anticipated to be bourn directly by the organisers. Instead they will be met by British Cycling, which is funded through membership fees, sponsorship, lottery funding and grants.

The first year is likely to require 40-50 courses to be risk assessed in Wales. They will need to be reviewed (and possibly updated) each year in future where it is planned to be used as a course for cycle racing. A number of new courses will need to be assessed each year, which is anticipated to be around 5 new courses a year. Based on a cost per assessment of between £400 and £600, this equates to an aggregate cost of £16,000 to £30,000 in the first year and an estimated ongoing cost of £2,000 to £3,000 in each subsequent year. As noted above, risk assessments are carried out for some races currently and so not all of this cost will be additional.

This will increase the costs of holding a cycle race on the highways in some cases, for example if additional signs need to be purchased at a cost of a few hundred pounds. However, this is unlikely to be significant as the "additional" costs associated with enhanced risk assessment have largely been factored in. Welsh Cycling has supported organisers in the production of risk assessments for many road races for a number of years, leading to a generally high standard of risk assessment already for many courses. Secondly, Welsh Cycling has required for several years that organisers deploy its CSAS marshals (marshals who have been granted powers by the Welsh Police Forces via the CSAS scheme to stop and direct traffic) in road races, so the cost of these has been included in events for some time now.

There is a risk that the increased costs may discourage race organisers from holding their event in Wales, however, given a) that a number of organisers

already carry out risk assessments and b) the scale of the likely additional cost, this risk is considered to be minimal.

The practice of carrying out risk assessments in order to effectively manage risk is a cornerstone of health and safety practice. The Regulations will be in line with the standard practices for risk management, where assessments are a structured approach for recording, assessing, mitigating and reducing the foreseeable risks of an activity. The structured approach means that risks are more likely to be identified, and therefore more likely to be mitigated effectively. It also allows for more effective consideration of the effectiveness of mitigation measures, making it easier to improve safety measures over time. Consistent use of mitigation measures, required as a result of properly carried out risk assessments, will provide a better racing environment as we ultimately reduce incidents, reducing the likelihood of injury, and potentially saving lives.

The benefits of this approach would be greater levels of safety for competitors, race officials, spectators and bystanders. Replacing a “time and numbers” approach with a risk based approach will require risk mitigation measures to be put in place for all events.

The benefits of improved safety in races can be quantified in terms of the cost of an accident. The Department for Transport (DfT) publish estimates of the cost associated with transport accidents. These are split by severity and broad categories of costs – economic, human and medical. The latest estimates from DfT are presented in the table below. The weighted average cost across all accidents is estimated to be approximately £49,800, within a range of £14,320 (for slight injuries) to £1.65 million for a fatal accident. While an accident in a cycle race is not strictly speaking a “transport accident”, it is an accident that has taken place on a public highway. The impact in terms of medical and ambulance costs, lost output and human costs would be directly comparable.

Cost of a road accident by severity, 2010 (£)	<b>Economic (Lost output)</b>	<b>Human costs</b>	<b>Medical &amp; ambulance costs</b>	<b>Total</b>
Fatal	568,477	1,084,230	980	<b>1,653,687</b>
Serious	21,903	150,661	13,267	<b>185,831</b>
Slight	2,315	11,025	980	<b>14,320</b>
<b>Average, all casualties</b>	<b>10,159</b>	<b>37,277</b>	<b>2,347</b>	<b>49,782</b>

Source: Department for Transport, Transport Appraisal Guidance Unit 3.4.1, August 2012

It is not possible to consider comprehensive data on rates of accidents at races, as they are not routinely reported. Comparing the data in the table above to the cost of the risk assessments, the benefits of preventing one slight accident in every 24 races held outweigh the costs of carrying out a risk assessment. One fatality would need to be prevented every 2756 races taking the upper estimate of £600 per risk assessment for the benefits to outweigh the costs. Fatal accidents in cycle races are rare, there has been one fatal cycle race accident in Wales in the last 20 years, but slight and severe injuries are more common. By more consistent action to mitigate the risks identified in assessments which are done to a professional standard, the benefits in terms of reduced accidents would outweigh the costs of carrying out the assessments.

Combined with Option 2, this approach would allow for the route of a race of time trial to be determined on a risk based approach. This would allow for greater consideration of safety, local disruption and community benefits in determining an appropriate route.

#### Option 4 - repeal the Regulations entirely and replace with new Regulations for Cycle Racing on the Highways.

While the Regulations would benefit from being updated, there is no evidence to suggest that they are ineffective as currently drafted. The regulatory framework is understood and used for many races every year.

If we were to repeal the Regulations and replace them, it is likely that the replacement Regulations would be substantially similar to the existing ones. There is little evidence to suggest that any benefits of the new framework would outweigh the disruption and cost of creating a new regulatory framework, especially one that is so similar to the existing regime. It could also lead to uncertainty and confusion among race organisers, as they interpret a new framework.

Compared to the option of updating the Regulations, Option 4 does not have any defined benefits. The costs of Option 4 would depend on how a new regulatory framework would operate.

#### **Summary of Preferred Option**

None of the options on their own achieves the aims of making the Regulations. However, replacing a time and numbers approach to authorisation with a risk management approach (Option 3) and removing unnecessary criteria (Option 2) would achieve these aims. For both of these options, the benefits outweigh the costs.

## **Consultation**

Before making such changes to Regulations, the Welsh Ministers are required to consult on their proposed changes. The Department for Transport ran a consultation on these changes separately. However, as these regulation making powers are the powers of the Welsh Ministers in relation to Wales, we ran a separate consultation seeking views from Welsh stakeholders.

The consultation ran from 2 December 2013 to 13 January 2014. The reduced consultation period was due to stakeholders having previously been consulted by the Department for Transport on the proposed changes for 12 weeks. 2 Welsh-specific responses were submitted to the Department for Transport and subsequently shared with the Welsh Government. 6 responses were submitted in response to the Welsh Government consultation, which were in mainly in favour of the proposals as drafted. Proposals to remove police officers powers to impose conditions on races were kept, as a result of the response submitted by Guide Dogs for the Blind. Welsh Government officials have also worked with Welsh Cycling to ensure the proposed Regulations are deliverable.

## **Competition Assessment**

The competition filter indicates that these Regulations are not likely to have a significant impact on competition. See appendix A.

## **Post Implementation Review**

We will work with Welsh Cycling and the Police to see how the Regulations are being observed, and the impact they are having on the safety of cycle races on the highway.

## APPENDIX A

### The Competition Assessment

The filter test indicates that there is likely to be little impact on competition.

The competition filter test	
Question	Answer yes or no
<b>Q1:</b> In the market(s) affected by the new regulation, does any firm have more than 10% market share?	No
<b>Q2:</b> In the market(s) affected by the new regulation, does any firm have more than 20% market share?	No
<b>Q3:</b> In the market(s) affected by the new regulation, do the largest three firms together have at least 50% market share?	No
<b>Q4:</b> Would the costs of the regulation affect some firms substantially more than others?	Yes
<b>Q5:</b> Is the regulation likely to affect the market structure, changing the number or size of businesses/organisation?	No
<b>Q6:</b> Would the regulation lead to higher set-up costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q7:</b> Would the regulation lead to higher ongoing costs for new or potential suppliers that existing suppliers do not have to meet?	No
<b>Q8:</b> Is the sector characterised by rapid technological change?	No
<b>Q9:</b> Would the regulation restrict the ability of suppliers to choose the price, quality, range or location of their products?	No