TRANSPORT (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Transport (Scotland) Bill introduced in the Scottish Parliament on 27 October 2004. It has been prepared by the Scottish Executive to satisfy Rule 9.3.3(c) of the Parliament’s Standing Orders. The contents are entirely the responsibility of the Scottish Executive and have not been endorsed by the Parliament. Explanatory Notes and other accompanying documents are published separately as SP Bill 28–EN.

BACKGROUND

2. This Bill is the fulfilment of the commitments in the 2004 White Paper, Scotland's transport future\(^1\), to put in place new delivery structures for transport, statutory Transport Partnerships, which will bring a strong regional approach to transport infrastructure and services. The Bill also makes a number of other legislative changes to improve transport services. Principal among these are provisions to enable the Scottish Ministers to run concessionary travel schemes at their own hand and the regulation of utility company road works. The White Paper itself developed commitments in A Partnership for a Better Scotland: Partnership Agreement\(^2\) published in May 2003.

3. The Scottish Executive is also committed to establishing a national transport agency. This will be, as stated within the Partnership Agreement, an executive agency directly accountable to the Scottish Ministers. The agency does not require legislation to be established. It will be responsible, amongst a range of functions, for devising a new national long-term transport strategy that will provide the framework within which councils and the new Transport Partnerships develop their own plans. The agency will have a leading role in improving the delivery of transport functions and therefore provides the context for, and will have a strong relationship with, many of the provisions within the Bill.

POLICY OBJECTIVES OF THE BILL

4. The Bill makes substantive provision in relation to three major policy areas in transport (Transport Partnerships, road works and concessionary travel) and a number of minor provisions in relation to other transport areas. Each set of provisions meets a discrete set of detailed objectives. However, the overarching objective for the Bill is in line with that set out by the White Paper for transport as a whole: “to promote economic growth, social inclusion, health and protection of our environment through a safe, integrated, effective and efficient transport system.”

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5. Part 1 provides a statutory basis for Transport Partnerships and enables them to receive and exercise transport functions transferred by the Scottish Ministers. These provisions aim to meet the commitment, given in the Partnership Agreement, to develop effective regional transport delivery partnerships.

6. Part 2 makes provision to improve the co-ordination and quality of road works carried out on Scotland’s roads. These provisions meet the objective of promoting economic growth by managing and maintaining road infrastructure and maximising its efficiency.

7. Part 3 of the Bill makes provision enabling the Scottish Ministers to run concessionary travel schemes at their own hand. It also details a range of miscellaneous provisions: abolishing the requirement on local authorities to inform the Scottish Ministers before a pedestrian crossing is established, altered or removed; amending the procedure for dealing with applications for Harbour Orders; modifying the Highlands and Islands Shipping Services Act 1960; and making minor amendments to the Transport (Scotland) Act 2001.

CONSULTATION

8. The Scottish Executive has consulted extensively on the policy which is being implemented through this Bill. The consultation began in September 2003, a few months after the publication of the Partnership Agreement, with the publication of Scotland’s Transport: Proposals for a new approach to transport in Scotland. This set out a range of options in relation to the establishment of a national transport agency and stronger regional delivery bodies. A national transport conference was held on 25 November 2003 at which 400 delegates from all areas of transport had the opportunity to influence policy development; this was complemented by a series of regional events.

9. In October 2003, the Scottish Executive published Scotland’s Transport: The Regulation of Utility Company Road Works, which began a process of consultation primarily with industry and local authorities on how best to regulate utility road works.

10. Earlier this year, the Scottish Executive consulted local authorities and harbour authorities respectively on minor provisions to simplify the procedures relating to pedestrian crossings and harbour orders.

11. The Bill provides considerable flexibility in relation to the operation of the Transport Partnerships and concessionary travel provisions, the detail of which will be specified in secondary legislation. The consultation process is continuing with interested parties as to how the powers contained in this Bill should be exercised. Before introducing any national concessionary travel scheme using the powers contained in the Bill, the Scottish Executive will consult local authorities and transport operators, in order to ensure that any scheme is efficient and effective.

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12. The Scottish Executive is engaged in consultation with local authorities, Strathclyde Passenger Transport, the existing voluntary regional Transport Partnerships and others concerning the development of the precise boundaries, constitution, functions and financing of the new Transport Partnerships.

PART 1: REGIONAL TRANSPORT

Policy objectives

Regional Transport Partnerships

13. Before 1996, local government transport functions were exercised by 9 regional councils, 3 islands councils and, in the case of public transport functions in the greater Glasgow area, by Strathclyde Passenger Transport Executive (SPTE). Since reorganisation under the Local Government etc. (Scotland) Act 1994, these transport functions have been the responsibility of the 32 unitary councils and Strathclyde Passenger Transport Authority and Executive (SPTA and SPTE, operating under the name of SPT). In the most highly and densely populated parts of Scotland, unitary councils have operated within smaller boundaries than their regional predecessors. This has meant that council boundaries often do not reflect travel patterns, with the result that decisions taken in one council can have an impact beyond its borders. Local authorities have increasingly sought ways to work together, across boundaries, to tackle the most significant transport problems.

14. This has led to the establishment by local authorities of four voluntary regional Transport Partnerships - HITRANS,5 NESTRANS6, SESTRAN7 and WESTRANS8 - covering 30 out of the 32 local authorities (SPT works closely with WESTRANS but is not a formal member). Since 1999, the Scottish Executive has supported the development of these voluntary partnerships and in recent years has provided direct financial contributions towards the costs of permanent staff and also ad-hoc grants for the partnerships to use in funding regional priority projects.

15. As set out in Scotland’s transport future, the Scottish Executive wishes “to build organisational capacity throughout government in Scotland and promote a more strategic approach to the planning and delivery of transport at all levels.” Part 1 of the Bill is intended to address capacity-building at the regional level. Whilst the Scottish Executive recognises the achievements of the voluntary partnerships and SPT, the Scottish Ministers believe that there is a need for more formalised, integrated transport bodies at regional level. Therefore, a duty will be placed on the Scottish Ministers to create statutory regionally-based Transport Partnerships, covering every part of Scotland. The order creating the partnerships will specify the membership and voting rights of members representing the constituent councils and external members.

16. The design of the Transport Partnerships will be influenced by the local authorities and existing voluntary partnerships themselves, as described in Scotland’s transport future. The boundaries of the partnerships, and their constitution, membership and voting arrangements, will be

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5 HITRANS: Highlands & Islands Transport Partnership
6 NESTRANS: North East Scotland Transport Partnership
7 SESTRAN: South East Scotland Transport Partnership
8 WESTRANS: West of Scotland Transport Partnership
determined by the Scottish Ministers following detailed consultation with local authorities and other interested parties and, so far as possible, on the basis of agreement amongst the constituent councils.

17. In order to get the first partnerships up and running relatively soon after the passage of the Bill, the Scottish Ministers propose to take responsibility for the first set of external member appointments, which will expire at the time of the council elections in May 2007. In practice, these first appointees will be based on nominations from the constituent councils and, in the west of Scotland, from SPTA as well. Thereafter the external members of the partnership will be appointed by the partnership, taking account of any guidance issued by the Scottish Ministers and subject to their consent.

18. It is also proposed to place a duty on the Transport Partnerships to produce a regional transport strategy within a year of their creation. Each strategy will make the case for investment and infrastructure in that region to address transport needs and guide and co-ordinate the activities of the individual councils in the delivery of that strategy. Strategies will have to take account of any guidance produced by the Scottish Ministers and, in time, additional context will be provided by a national transport strategy. The regional strategy will have to be approved by the Scottish Ministers.

19. The Transport Partnerships will have a duty to consult with their constituent councils during the preparation of their strategies. Councils and other specified public bodies will have in return a duty to perform, so far as possible, their transport functions in a way that is consistent with the regional transport strategies.

20. The Transport Partnerships will also be expected, in time, to take on other transport functions, either solely or in partnership with their constituent local authorities. The conferral of functions on a Transport Partnership will be by Ministerial order but will, as with the order establishing the partnerships, be clearly driven by the wishes of the partnership itself and its constituent councils. The Scottish Ministers will provide guidance, following consultation, which will set out a small number of models for the allocation of functions.

21. The Transport Partnerships will be able to receive funding directly from the Scottish Executive and other organisations, and will be able, if appropriate functions are conferred upon them, to engage in revenue-raising activities. Other funding, to support running costs, including the cost of borrowing, will be provided by the constituent councils from their mainstream revenues, including Aggregate External Funding (AEF). It is anticipated that the majority of a partnership’s funds will be provided by its constituent councils. The Scottish Executive proposes that the partnership itself will be responsible for agreeing how much each council should contribute. However, the Scottish Ministers would be able to intervene if an agreement cannot be reached.

Strathclyde Passenger Transport’s rail functions

22. As described in Scotland’s transport future, the new national transport agency will be established, amongst other things, to improve delivery of the Scottish Executive’s own transport functions. It will therefore be taking the strategic responsibility for the Scottish rail passenger franchise. SPT currently exercise rail powers and are a party to the Scottish rail franchise. The intention is to make provision in the Bill that will enable the transfer of these powers to the Scottish Ministers following an order being made under section 30 of the Scotland Act 1998. Once made a
section 30 order enables the Scottish Parliament to legislate in matters that were previously reserved.

23. That approach is consistent with the proposals set out in the Department for Transport’s recent White Paper The Future of Rail. The proposed abolition of the Strategic Rail Authority (SRA) will lead to the Scottish Ministers taking greater responsibility for railway services in Scotland, including taking over the role of the SRA as regards the Scottish rail passenger franchise.

Consultation and alternative approaches

24. The Scottish Executive commissioned an independent review and summary of the responses\textsuperscript{9} to its formal consultation paper\textsuperscript{10}. The review drew the following conclusions:

- “There was much acknowledgement of what respondents perceived to be the valuable contribution made by the current voluntary regional Transport Partnerships.

- However, many consultees considered that the current voluntary regional Transport Partnerships were reaching the limits of their operation within their existing constitution.

- Current voluntary regional Transport Partnerships were seen by some as possibly lacking in weight and strength, under-resourced, affected by the differing priorities of constituent councils, lacking in accountability, a tendency to lack a strategic outlook, with an inconsistency across different partnerships.”

25. A general, though not unanimous view, was that the voluntary partnerships had made a valuable contribution to improve regional transport delivery but that the current arrangements were now reaching their limits. The consultation paper explored a number of different approaches to the strengthening of these regional Transport Partnerships. These included joint boards, joint committees, new passenger transport authorities and executives, or special purpose bodies such as Transport Initiatives Edinburgh.

- Joint committees did not attract much support. The main problem identified was their weak budget setting powers.

- Joint boards had more support but were opposed by a significant minority of respondents, mainly local authorities. Problems with applying the joint board model to transport included the inflexibility of boundaries, which meant each authority had to choose one joint board only to cover their transport interests. Other concerns included the potential dominance by the multiple representatives of large councils, the difficulty of carrying out strategic regional as well as local tasks, the threat to local accountability and the transitional and ongoing costs of such bodies.

- The contribution of SPT was recognised by most consultees but there was uncertainty as to whether the model was appropriate for other parts of Scotland. The limited remit of Public Transport Authorities/Public Transport Executives, particularly relating to roads, was also seen as a drawback to this option.


\textsuperscript{10} Scottish Executive, Scotland’s Transport – Proposals for a New Approach to Transport in Scotland (2003)
The option of special bodies attracted limited interest and did not seem to most respondents to be the basis of a way forward in regional transport delivery.

26. Considering the responses, the Scottish Executive concluded that there was support for a step forward in regional transport delivery but no strong support for any of the available models. Therefore a tailor-made and dynamic model has been devised which builds in a strong degree of flexibility and local discretion but leaves open the possibility for strong partnerships to be created where this is wanted.

27. The Scottish Executive set out its response to the consultation in Scotland’s transport future. Initial discussions on the White Paper proposals and the likely scope and content of this Bill were held with key interested parties during the summer of 2004. Meetings were held with representatives of the existing voluntary regional Transport Partnerships, SPTE, the Convention of Scottish Local Authorities (CoSLA), the Society of Chief Officers of Transportation (SCOTS), various local authorities, the Mobility and Access Committee for Scotland (MACS), and the Confederation of Passenger Transport (CPT). There was agreement on the broad thrust of the proposals however a number of concerns were raised in respect of the details. The Scottish Executive agreed that further consultation should take place to address those concerns.

28. Formal consultation on the boundaries, membership, functions and funding of Transport Partnerships is now underway and we have proposed to the voluntary partnerships that a new series of regional events is held during the autumn/winter of 2004. The intention is that illustrative, draft orders for the establishment of Transport Partnerships will be available during Stage 2 of the parliamentary consideration of the Bill.

PART 2: ROAD WORKS

Policy objectives

29. These provisions will improve the quality and co-ordination of road works in Scotland. The Scottish Executive is responding to increasing problems on Scotland’s roads network caused by road works which are not properly co-ordinated (thus causing disruption and inconvenience to road users) or are of insufficient quality. These problems have emerged because of the growth of utilities and related increased consumer demand for new services such as broadband or cable TV. Existing legislation was developed before these changes.

30. The Bill introduces provisions to:
   - make the Scottish Road Works Register (SRWR) the single national register for planning and co-ordinating road works;
   - provide for a new public appointee, the Scottish Road Works Commissioner;
   - introduce tighter requirements for directing the timing of works, reinstating (putting back) roads, and new provisions on resurfacing roads;
   - change the enforcement regime of offences under the current legislation, including the introduction of fixed penalty notices; and
tighten the requirements for training of personnel involved in carrying out, supervising or administering road works.

**The Scottish Road Works Register**

31. The Bill improves the co-ordination of road works, a function for which road works authorities are responsible under the New Roads and Street Works Act 1991, by establishing a national statutory register to which all undertakers and road works authorities must subscribe. The Bill makes the Scottish Road Works Commissioner (see paragraph 35) the responsible body for the SRWR. The key planning tool currently used by road works authorities to meet this responsibility is the SRWR which was established by the Roads Authorities and Utilities Committee (Scotland) (RAUC(S)) to meet the requirement for road works authorities to keep a register of road works as set out in the 1991 Act. There are two principal problems with the current regime which the Bill addresses. Firstly, not all undertakers participate in maintaining the SRWR, and of those which do, not all comply with their obligation to regularly provide information to it. This makes it difficult for road works authorities to fulfil their co-ordination role, because the information held on SRWR can be incomplete or inaccurate. Secondly, it is clear that the quality and level of information held on SRWR could be enhanced to make it a much more useful planning tool.

32. Currently, both road works authorities and undertakers can carry out road works. A statutory undertaker for the purposes of the 1991 Act is a person who has a statutory right to conduct road works or has permission from the road works authority under section 109 to execute road works. Section 112 of the 1991 Act imposes a duty on road works authorities to keep a road works register. They have chosen to do this in agreement with other undertakers, by establishing a central resource for Scotland rather than each road works authority maintaining its own register. This is an administrative rather than a statutory arrangement.

33. Amendments are proposed to the 1991 Act to tighten and adjust the current requirements covering registers of road works, by establishing the SRWR as a statutory register and placing new duties on undertakers and road works authorities to maintain and use the SRWR as the central tool for daily and longer term planning.

**The Scottish Road Works Commissioner**

34. The policy aim in creating this new public appointment is twofold:

- to provide a new independent body through which overall national performance on road works can be monitored and improved;
- to tighten the current ineffective enforcement system for offences under the 1991 Act, by providing an independent body which can impose penalties for failure to comply with section 119 of the 1991 Act.

35. More specifically, the Scottish Road Works Commissioner will be responsible for monitoring the provision of information to the SRWR, through ‘spot checks’ on the SRWR itself and by reviewing performance at a national level through the annual report on the SRWR.
36. The Scottish Road Works Commissioner will have a direction-making power in respect of the duty of road works authorities to co-ordinate road works under section 118 of the 1991 Act, and the duty of undertakers to co-operate with road works under section 119 of the 1991 Act.

**Timing of works, placing of apparatus in roads and restrictions on follow-up works**

37. The collective objective of these provisions is to improve the co-ordination and quality of road works overall. Section 18 clarifies and strengthens the power of road works authorities to direct the timing of road works, on certain days or certain times on certain days. Section 19 similarly amends existing powers for road works authorities to direct where apparatus in a road may be placed, to minimise disruption to traffic from the ensuing road works. Section 20 allows road works authorities to restrict follow-up works after substantial road works for 3 years, where appropriate. These provisions closely follow those set out in the Traffic Management Act 2004 for England and Wales.

**Reinstatements**

38. The objective of these provisions is to ensure that the quality of the road surface is maintained to required standards after road works have been carried out. The number of statutory undertakers involved in carrying out road works, and the number of road works themselves, has led to problems with the quality and longevity of reinstatements. The Bill will:

- tighten existing requirements on statutory undertakers when reinstating (putting back) the road after road works are completed; and
- introduce new powers for road works authorities to require full or half-width resurfacing of the road when this is necessary to protect the road surface quality.


**Enforcement**

40. The Bill tightens and makes more effective the enforcement regime for road works offences. It enhances and improves the system for enforcing both current and new law on road works. The Bill increases the level of some penalties and establishes new fixed penalties for other offences. The Bill broadly follows the principles established in the Traffic Management Act 2004, in terms of which offences will become fixed penalty notices, and which will remain criminal offences. The Bill will also, as is the case with the Traffic Management Act 2004, increase criminal fines from the current level 3 to level 4 or, in some serious cases, to level 5. The Bill contains provisions enabling the Scottish Ministers, by order, to decriminalise offences in the future if this is felt appropriate.

**Training**

41. The Bill requires people involved in carrying out road works (both supervisors and operatives) to have the right qualifications to do the job safely and to the required quality standards. The Bill follows the measures set out in the Traffic Management Act 2004 (section 50 (Qualifications of supervisors and operatives)). These provisions amplify those set out in section 67 (and associated regulations) of the 1991 Act (the ‘Scottish’ equivalent of section 67 of the 1991 Act is section 126), as follows:
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- by requiring from undertakers, by issuing them notice, evidence of the qualifications of road works supervisors and operatives (the format and type of evidence to be set out in regulations);
- by requiring from undertakers the names of those staff; and
- by requiring this information at any time whilst the road works are being carried out, or within a period after the completion of the road works (time period to be prescribed through regulations).

42. In addition, section 50 of the Traffic Management Act 2004 stipulates that regulations may be made which require documentary evidence of qualifications to be issued by an approved body. The effect of this is that training for road works supervisors and operatives must be accredited. Again, the form of documentary evidence required is to be set out in regulations.

43. The Bill also provides for a duty of road works authorities and undertakers to ensure competence of employees involved in the administration of road works (for example by inputting information to the SRWR). The Bill sets out that road works authorities and undertakers should use best endeavours to ensure that their employees or agents are competent to carry out certain duties under the Bill. In practical terms, this means that road works authorities and undertakers should ensure their employees or agents are trained to do what is required. The Bill does not prescribe required training, recognising that different organisations may have different ways of approaching this best fitted to their size and needs.

Consultation and alternative approaches

44. The consultation, Scotland’s Transport: The Regulation of Utility Company Road Works, contained two broad propositions. The first, termed the community planning approach, proposed Scottish Executive guidance to local authorities to suggest how the “power to advance well being” and the community planning process could be used to improve the co-ordination and completion of road works by utility companies. The second suggested taking forward new primary legislation particularly with reference to the need to review penalties, to review existing powers and to emphasise the need for better planning and training for all those involved in the planning, completion and inspection of utility road works.

45. The response to the consultation was relatively low in comparison to the number of consultees to whom the consultation paper was issued. Overall, however, a larger number of respondents were in favour of new primary legislation than the number of those with a preference for the use of community planning. It was clear however that the perspective of parties – the road works authorities and the utility companies – meant that though there were common themes, there was no majority view for many of the issues raised. The report of the consultation exercise\(^\text{11}\) contains details of the responses, however it was apparent from a distillation of those responses that the status quo was no longer acceptable and that the community planning approach, though good in theory, would not in practice work. The Scottish Executive decided therefore to take forward proposals to initiate new legislation. Subsequent meetings were held with the Roads Authorities

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and Utility Companies Committee (Scotland) to explain the broad thrust of the Scottish Executive’s proposed approach.

46. The Scottish Executive was also aware of the discussions regarding legislative proposals conducted at meetings between the Department of Transport and the Highways Authorities and Utility Committee. Those discussions culminated in the Traffic Management Act 2004. Many of the provisions of the Bill are similar to those contained within the TMA 2004.

PART 3: MISCELLANEOUS

Concessionary travel

Policy objectives

47. Section 37 of the Bill sets out provisions to give the Scottish Ministers powers to run concessionary travel schemes at their own hand. These powers will be in addition to those of local authorities to run schemes under the Transport Act 1985. The Scottish Ministers’ powers to run schemes will be discretionary, allowing them to take over the direct management and operation of concessionary travel schemes if they wish to do so in the future. The Scottish Ministers will exercise their powers by the making of an order establishing a scheme. This order will include provision for the: administration of the scheme; reimbursement of operators; right of operators to participate; right of the Scottish Ministers to require participation; and appeals by operators about compulsory participation.

48. Under section 93 of the Transport Act 1985, local transport authorities have discretion to operate concessionary travel schemes on public transport. In Scotland there are 16 local concessionary travel schemes run by individual local authorities and groups of local authorities. These schemes have been developed locally over the years to meet the needs of people in the area served by the particular scheme. As a result, each scheme is different – in terms of the categories of people who qualify for concessionary travel; the transport modes on which travel is available; and the nature of the concession on offer.

49. In September 2002 all 16 local schemes were adjusted to introduce a national minimum standard of free local off-peak bus travel for older people and people with disabilities. This national standard was introduced as an enhancement to what the schemes already offered, with no reduction in benefit from what was already provided. In April 2003 schemes were further enhanced to provide for equalisation of eligibility for concessionary travel. Previously, women aged 60 and over and men aged 65 and over were entitled to concessionary travel. Men aged 60 to 64 were given the same entitlement from April 2003. These enhancements were introduced by agreement among CoSLA, the local transport authorities, bus operators and the Scottish Executive and reflected in legislation via section 44 of the Local Government in Scotland Act 2003.

50. The addition of nationally mandated enhancements as part of local concessionary travel schemes raises the question of whether it continues to be appropriate for concessionary travel to be solely the responsibility of local transport authorities. Added force is given to this question by the terms of the commitments on concessionary travel included in A Partnership for a Better Scotland. The Partnership Agreement commits the Scottish Ministers to extending concessionary travel with the introduction of a national off-peak bus scheme for older people and people with disabilities and
the progressive introduction of a scheme of national bus, rail and ferry concessionary travel for young people, initially for all those in full time education or training.

51. There are a number of options for the management of concessionary travel:
   - Local authorities could continue to operate schemes, including nationally mandated enhancements, at a local level.
   - Ministers could take on responsibility for managing concessionary travel at a national level (via the new transport agency).
   - The Transport Partnerships could take on responsibility for concessionary travel in due course.

52. Through the Bill, the Executive wishes for flexibility so as to enable the Scottish Ministers (via the transport agency), the Transport Partnerships or local transport authorities to have powers to run concessionary travel schemes. The Scottish Ministers’ power is discretionary so it can be exercised at any point in the future.

Consultation

53. The Scottish Executive has been engaging with key stakeholders regarding delivery of the Partnership Agreement commitments on concessionary travel. A workshop, attended by a wide range of bodies including transport operators, transport authorities, CoSLA and user representatives including young people, older people and people with disabilities, was held by the Scottish Executive last year to consider the commitments. All parties were generally in favour of national concessionary travel schemes. The Scottish Executive has also set up a Concessionary Fares Reimbursement Group involving key stakeholders to consider the detailed issues surrounding concessionary travel reimbursement.

54. The Scottish Executive’s legislative plans with regard to concessionary travel were set out in Scotland’s transport future which outlined the intention to take discretionary powers to enable the Scottish Ministers to run concessionary travel schemes at their own hand.

Alternative approaches

55. The main alternative approach would be to rely on the existing legislative framework for delivery of concessionary travel rather than taking powers for the Scottish Ministers to run concessionary travel. This would mean that local schemes and nationally mandated enhancements would continue to be delivered by local authorities, either by current voluntary agreement or on a statutory basis via orders made under section 68 of the Transport (Scotland) Act 2001. This is an option, but is inconsistent with the focus on national entitlements. It also represents a very significant challenge for bus and transport operators – and local transport authorities – as 16 separate sets of negotiations are necessary. Delivery via local authorities would result in a limited role for the new transport agency in concessionary travel. The agency could work with all partners to minimise duplication of effort, encourage commonality and consistency among schemes and ensure delivery of the commitments in the Partnership Agreement. However, the agency would not have powers to run the schemes.
56. In due course, the proposed Transport Partnerships could take on responsibility for concessionary travel. This would enable schemes to continue to include local elements and nationally mandated enhancements thereby significantly reducing the current duplication of effort. However, there may be issues regarding the timescale for establishing the national travel schemes and the full statutory establishment of Transport Partnerships. The role to be played by the transport agency would be similar to that outlined above, but with fewer bodies responsible for schemes the co-ordination would be much simpler and more manageable.

57. Local authorities or Transport Partnerships continue to be options for the management of concessionary travel. However, with the focus now on national entitlements the Scottish Ministers wish to consider whether a national approach to delivery of travel schemes might now be appropriate. Options for management of schemes will be discussed with key stakeholders. Flexibility is wanted so as to allow the Scottish Ministers to choose which body should take on responsibility for concessionary travel. Alternative options shall remain available should the Scottish Ministers wish to change tack at any point in the future.

**Pedestrian crossings**

*Policy objectives*

58. The Bill makes a minor amendment to simplify the procedures for a local traffic authority wishing to change a pedestrian crossing. Currently, local traffic authorities are able to establish, alter or remove pedestrian crossings on roads for which they are the traffic authority, under powers given by section 23 of the Road Traffic Regulation Act 1984. However, they are required by section 23(2), before establishing, altering or removing a crossing, to:

- consult the police about the proposal;
- give public notice of the proposal; and
- inform the Scottish Ministers in writing.

59. The Bill removes the requirement in section 23(2)(c) for local traffic authorities to inform the Scottish Ministers in writing before establishing, altering or removing a pedestrian crossing.

*Alternative approaches*

60. There are only two available options:

- retain existing requirement; or
- repeal.

*Reasons for choosing to remove statutory requirement*

61. Prior to the Road Traffic Regulation Act 1984 local authorities did not have the power to install pedestrian crossings and required the approval of Ministers. The 1984 Act introduced a power for local authorities to establish, alter or remove pedestrian crossings without Ministerial approval but required authorities to inform the Secretary of State in writing before doing so.
62. Since then local authorities have gained considerable experience in the use of pedestrian crossings. As a result, there is no longer considered to be a need for local authorities to notify the Scottish Ministers on pedestrian crossing proposals. The statutory requirement is now considered to be an unnecessary burden on local authorities. Furthermore, the number of notifications received from local traffic authorities in Scotland in recent years suggests that the level of compliance has diminished.

Consultation

63. The consultation, *Pedestrian Crossings: Proposal to remove requirement to inform Scottish Ministers before establishing, altering or removing a crossing*, conducted\(^{12}\) in January 2004 confirmed widespread support from local authorities for the removal of this statutory requirement.

Highlands and Islands shipping

Policy objectives

64. The Bill makes provision to modify the effect of the Highlands and Islands Shipping Services Act 1960, as regards devolved purposes for Scotland. The policy objective is to terminate the requirement for advance Parliamentary approval before financial assistance can be given to shipping services in the Highlands & Islands.

65. Assistance can instead be provided by the Scottish Ministers, under section 70 of the 2001 Act, to assist shipping services in the Highlands and Islands. This will make it easier to comply with European Union (EU) Maritime State Aid requirements which require support for such services to be subject to competition (EU Council Regulation 3577/92). Scottish Executive policy is to assist shipping services which serve the Highlands and Islands as ‘lifeline’ routes for the economic and social benefits involved. This is underlined by the commitment in the *Partnership Agreement* to “…continue to support and invest in lifeline ferry links…” . The policy is to continue to have a power, rather than a duty, for the Scottish Ministers to support such services.

Detailed provisions

66. The 1960 Act empowers the Scottish Ministers to assist those persons, including local authorities, who provide sea transport services serving the Highlands & Islands. The Scottish Ministers may provide assistance through giving grants or loans or by entering into contracts for the charter of ships. Where any proposed advance exceeds £10,000 a draft of the undertaking, including its terms and conditions, must be laid before, and approved by, the Scottish Parliament.

67. The 1960 Act is used as the statutory basis for supporting lifeline ferry services in the Highlands & Islands, including CalMac and NorthLink services. It has also been used for the Tariff Rebate Subsidy Scheme which assists the shipping of livestock from Orkney and Shetland and until recently the shipment of certain bulk supplies.

68. There are a multitude of deficiencies in the 1960 Act:

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- It creates a cumbersome process because assistance for sea transport services in the Highlands and Islands is subject, through a Statutory Instrument, to advance Parliamentary approval of the draft undertaking, setting out the terms and conditions under which the assistance is to be given. This advance approval is required for assistance exceeding £10,000; a figure that has never been updated since the 1960 Act was enacted. The process is time consuming as once the terms of a draft undertaking are agreed with a shipping operator, it can take up to 6 weeks for the Statutory Instrument to be considered in the Scottish Parliament. The process is out of kilter with contemporary practice for other, often larger, grants in similar discretionary areas of expenditure such as transport, industry and agriculture.

- It is too inflexible to cope with the implementation of European Union tendering and contractual requirements. The European Union rules are complex and involve competition and tendering on a basis not envisaged when Parliamentary undertakings were required by the 1960 Act. For example, contracts are now limited to a maximum of 6 years under European Union rules, whereas draft undertakings were envisaged to last for a much longer period.

- Assistance can be offered to persons who provide, and are wholly or mainly engaged in providing sea transport services serving the Highlands & Islands. This sits uneasily with European Union State Aid rules which allow for access to markets, including State ferry subsidies.

69. The Bill essentially repeals the 1960 Act as regards Scotland and for devolved purposes. However the 1960 Act is not being repealed for reserved purposes. It will remain available to the Secretary of State for purposes such as providing financial assistance for non-bulk freight shipping services or passenger services (involving the Highlands & Islands) which start or finish or both, outwith Scotland. There are no alternative options to achieve the policy objective and though no formal consultation has been conducted with operators they have made comments regarding the deficiencies of the 1960 Act.

70. Section 70 of the 2001 Act provides that the Scottish Ministers may make grants to any persons for any purposes relating to transport. Once the 1960 Act is repealed, the grant-making power within section 70 of the 2001 Act will be used to support sea transport services. Section 70 cannot be used at present because of the principle that specific statutory powers must be used in preference to other, more general, powers. The 1960 Act is specific regarding the kind of sea transport services being supported and therefore the Scottish Ministers are obliged to use the 1960 Act in preference to the more generalised powers in section 70.

71. The Bill modifies section 70 so that it now gives the Scottish Ministers the power to make loans as well as grants. Under section 70, a report has to be made to Parliament each year so Parliament would continue to be informed about financial assistance for sea transport services, following the repeal of the 1960 Act.
Harbour orders

Policy objective

72. The objective behind the provisions is to make the procedure for Harbour Orders more flexible and accessible. This applies to Harbour Authorities promoting such orders, and to those who may wish to object or make representations.

Detailed provisions

73. The Bill amends the Harbours Act 1964 to give the Scottish Ministers greater discretion to determine whether objections to a Harbour Order should be dealt with by means of a public inquiry, a hearing or by written representations. Under the 1964 Act, one unresolved objection to a Harbour Order must be subject to a public local inquiry unless it is “frivolous or too trivial”. In practice this often deters a harbour authority from promoting worthwhile changes because the likelihood of an inquiry involves delay, uncertainty and extra costs. The formality of an inquiry may also deter potential individual objectors. The risks to the harbour authorities are not offset by benefits to the general public and to those who might wish to object or make representations.

74. Harbour Orders may be used to create a new harbour authority (Harbour Empowerment Order), or to revise the powers of an existing authority (Harbour Revision Order). They are used to change: the constitution of a harbour authority; the jurisdiction of the harbour area; and the byelaw-making powers. They are also used to authorise harbour works.

75. The procedures for making a Harbour Order are not in line with modern practice. The main difficulty is that a public inquiry must be held even if there is only one outstanding objection, unless it is “frivolous or too trivial to warrant the holding of an inquiry”. More recent legislation, for example the Town and Country Planning Acts and the Transport and Works Act 1992, allow hearings and written representations as an alternative to an inquiry. In these statutes, the objectors have the right to raise an objection or make a representation and be properly heard, but not necessarily at an inquiry. The Bill provides for a right to an inquiry if the objector is a local authority, or if the objector is to be subject to the compulsory acquisition of land.

76. The Bill makes amendments to the 1964 Act which do not remove or impede the right to make objections or representations. Objectors retain the right to be properly heard but the choice of procedure is made by the Scottish Ministers on a case by case basis.

77. These amendments do not preclude the holding of an inquiry for an appropriate case, and there will continue to be a Harbour Order inquiry if the Scottish Ministers are of the view that it is justified, for example, for issues where there are significant collateral implications for planning on the “landward” side. These provisions, therefore, meet the Executive’s wider objective to streamline and speed up planning and related procedures, while retaining a fair balance with the individual’s right to object.
Consultation

78. Consultation conducted in January 2004\(^\text{13}\) with the ports industry, environmental bodies, local authorities and other interested parties confirmed that there is unanimous support for the objective behind the proposed changes to the Harbours Act. No alternative approaches were forthcoming.

79. In the consultation the Scottish Ministers confirmed that it was intended to retain the existing right to a public inquiry where the objector is a local authority or where the objector is to be subject to the compulsory acquisition of land.

MINOR AMENDMENTS

80. A number of minor amendments are proposed to the Transport (Scotland) Act 2001. These amendments are in the main being made to clarify provisions and therefore formal consultation has not been undertaken.

Quality bus measures

Policy objectives

81. The Bill makes provision to give the local authorities in the SPT area powers to establish quality partnerships (QP), quality contracts and joint-ticketing schemes. The Executive’s policy objective is to encourage development of high-quality services and infrastructure at a local level.

82. Many of the constituent authorities have received funding from the Scottish Executive to improve bus infrastructure and it is logical to give them powers to include this infrastructure in a statutory QP scheme.

Detailed provisions

83. To operate quality partnerships, quality contracts and joint-ticketing schemes, local authorities are required to have in place "relevant general policies". ‘Relevant general policies’ are defined in section 48 of the 2001 Act to include the local transport authority’s local transport strategy and policies formulated under the Transport Act 1985. The Bill makes a minor amendment to section 48 to remove the requirement to have certain policies formulated under the 1985 Act thereby providing local authorities in the SPT area with powers, as is the case elsewhere in Scotland, to establish quality bus measures.

Meaning of “road”

84. The policy is that the same physical stretch of road should not be subject to charges imposed by more than one road user charging (RUC) scheme at the same time.

85. The Bill therefore amends the 2001 Act to ensure beyond doubt that although a road can be subject to more than one RUC scheme on different physical sections of it the same physical stretch of road cannot be subject to more than one RUC scheme at the same time.

\(^{13}\) Scottish Executive, Amendments to Harbours Act 1964 (2004)
This document relates to the Transport (Scotland) Bill (SP Bill 28) as introduced in the Scottish Parliament on 27 October 2004

Road user charging: appeals

86. The policy is to have an independent person to adjudicate on disputes relating to road user charging schemes and individual charges imposed under such schemes.

87. The Bill amends section 64 of the 2001 Act to enable the Scottish Ministers to appoint persons (adjudicators) to determine disputes relating to RUC schemes. The amendment also enables the conferral of powers on those adjudicators.

Local transport strategies: guidance and production by local traffic authorities

88. The policy is that guidance issued by the Scottish Ministers, in relation to local transport strategies, can apply to local traffic authorities as well as to local transport authorities.

89. The Bill amends the 2001 Act to ensure that a local traffic authority may produce a strategy deemed to be a local transport strategy for the purposes of the Act. The amendment also provides that local traffic authorities and local transport authorities may produce a local transport strategy in the absence of guidance from the Scottish Ministers.

Road user charging

90. The Scottish Executive wants to enable a charging authority to distribute the net proceeds from an RUC scheme to other local authorities. The Bill will amend the 2001 Act (para 5 of Schedule 1) to enable a charging authority to share the proceeds of the RUC scheme with any local authority, or other body, in Scotland for the purpose of directly or indirectly facilitating the achievement of the policies in the charging authority’s local transport strategy (LTS). This goes beyond sharing the proceeds with neighbouring local authorities. For example, the Bill makes it possible for a charging authority to give some of its RUC proceeds to a distant local authority to develop harbour facilities for a ferry connecting both authorities, assuming that this would meet the objectives of the charging authority’s LTS.

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT ETC.

Equal opportunities

91. The provisions of the Bill are not inherently discriminatory on the basis of gender, race, marital status, religion or sexual orientation.

92. The policy in relation to concessionary travel is to give the Scottish Ministers powers to run concessionary travel schemes at their own hand. These powers will duplicate those already held by local authorities and allow for the creation of concessionary travel schemes to give travel concessions on eligible journeys to eligible persons on eligible services. Accordingly, no new equal opportunities issues arise.

93. Should the Scottish Ministers decide to operate a national concessionary travel scheme, they will require to do so by order. The order will set out the detail of the scheme as regards who will be
eligible for concessions and the entitlements which will be available. The order will be subject to
affirmative procedure; therefore the Scottish Parliament will be required to give its approval to the
scheme and will have the opportunity to consider if equal opportunity issues arise.

**Human rights**

94. The Scottish Executive considers that all provisions of the Bill are consistent with the

**Rural and island communities**

95. The policy intention is that the Bill will apply to all parts of Scotland covering urban, rural
and island communities. The Bill has no differential impact on rural and island communities.

96. The Bill’s objectives in respect of Transport Partnerships are to promote new projects of
regional or strategic significance and this will be of particular benefit to island and rural
communities that often lack resources within their councils.

97. The repeal of the Highlands and Islands Shipping Services Act 1960 will not adversely
impact the provision of lifeline services. The policy is to improve the administrative and funding
procedures and there is no intention to make any change to the current level of support provided to
rural and island communities.

**Local government**

98. The establishment of Transport Partnerships will have a substantial impact on local
government. The creation of regional transport strategies and the power of Transport Partnerships to
give effect to those strategies will necessarily mean greater interaction and co-operation in the
determination and delivery of transport initiatives and associated expenditure. There will therefore
be changes in organisational culture, management structures and accountability as fewer services,
over time, may be the direct responsibility of councils.

99. The creation of Transport Partnerships does not alter the Scottish Executive’s ability to
support local authorities through the Public Transport Fund, the Rural Transport Fund and other
budgets to meet local transport needs.

100. The majority of Transport Partnership members will be drawn from local authorities and as
such will remain democratically accountable. The political and operational linkages with local
authorities have been deliberately designed to facilitate co-operation with them.

101. The Bill will give the Scottish Ministers the power to amend or revoke existing
concessionary fares schemes; this would be by order and subject to approval by the Parliament

102. The repeal of the statutory requirement to notify the Scottish Ministers before establishing,
altering or removing a pedestrian crossing as per section 23(2)(c) of Road Traffic Regulation Act
1984 will remove an unnecessary administrative burden on local authorities.
Sustainable development

103. Sustainable development represents a unifying theme in the Scottish Executive’s proposals. The provisions in the Bill reflect the linkages between transport and the Executive’s objectives for communities, health, the environment and the economy. The importance of these objectives is underlined by the duty given to Transport Partnerships to consider fully such issues in the production and execution of their regional strategies.

Business

104. The economy should benefit in a number of ways as a direct consequence of these provisions. The establishment of Transport Partnerships with external members representing the business community should ensure that transport strategies are better allied to the needs of economic development taking into account the transport needs in particular of business employees and business related journeys. There will be additional costs and burdens placed on utility companies through increased regulation by the Scottish Road Works Commissioner but those costs and burdens will only materialise if there is a lack of adherence to quality standards. At a practical level the improvement in the management of road works will result in less congestion and disruption for all road users including road haulers and public transport providers.
TRANSPORT (SCOTLAND) BILL

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