These documents relate to the Transport and Works (Scotland) Bill (SP Bill 66) as introduced in the Scottish Parliament on 26 June 2006

TRANSPORT AND WORKS (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)

CONTENTS

1. As required under Rule 9.3 of the Parliament’s Standing Orders, the following documents are published to accompany the Transport and Works (Scotland) Bill introduced in the Scottish Parliament on 26 June 2006:
   - Explanatory Notes;
   - a Financial Memorandum;
   - an Executive Statement on legislative competence; and
   - the Presiding Officer’s Statement on legislative competence.

A Policy Memorandum is printed separately as SP Bill 66–PM.
EXPLANATORY NOTES

INTRODUCTION

2. These Explanatory Notes have been prepared by the Scottish Executive in order to assist the reader of the Bill and to help inform debate on it. They do not form part of the Bill and have not been endorsed by the Parliament.

3. The Notes should be read in conjunction with the Bill. They are not, and are not meant to be, a comprehensive description of the Bill. So where a section or schedule, or a part of a section or schedule, does not seem to require any explanation or comment, none is given.

THE BILL

4. The Bill takes forward the Scottish Ministers’ commitment of 4 May 2005 to the Scottish Parliament to place the Scottish Ministers at the heart of an order-making process and thereby avoid the need for private Bills for transport-related developments.

5. The Bill also introduces, in response to the wishes of Parliamentary authorities, provisions to replace special Parliamentary procedure for the determination of transport-related developments and instead, aligning with the broad thrust of Parliament for a more proportionate process, make the Scottish Ministers rather than the Scottish Parliament, in such circumstances, the appropriate decision-making body.

COMMENTARY ON SECTIONS

6. The Bill is in three parts:

   • Part 1: Orders authorising works etc. (which contains 22 sections and 1 schedule),
   • Part 2: Miscellaneous amendments (containing 4 sections), and
   • Part 3: General (containing 3 sections and 2 schedules).

7. The contents of the Bill are summarised below:

   • Part 1 makes provision to enable the Scottish Ministers, under an order-making power, to authorise transport developments and provides details of the procedure for the making of orders.
   • Part 2 makes modifications to legislation relating to road and harbour developments, bringing consistency to the authorisation process for transport developments. It also establishes revised procedures for the making of Pilotage orders. A minor modification is made to the Transport (Scotland) Act 2001 to enable the Scottish Ministers to make grants and loans for the purchase of certain properties in consequence of a transport development.
   • Part 3 describes how secondary legislation (orders, rules and regulations) will be made. It also deals with modifications, repeals in respect, predominantly, of special Parliamentary procedure and the commencement and short title of the Act.
These documents relate to the Transport and Works (Scotland) Bill (SP Bill 66) as introduced in the Scottish Parliament on 26 June 2006

8. The Bill impacts on a number of Acts but makes particular reference to:
   - the Harbours Act 1964
   - the Roads (Scotland) Act 1984
   - the Pilotage Act 1987

THE BILL – SECTION BY SECTION

PART 1 – ORDERS AUTHORIZING WORKS ETC.

Power to make orders

Section 1: Orders as to transport systems and inland waterways

9. Section 1(1)(a) gives the Scottish Ministers a power to authorise, by order, the construction and operation, or matters connected with the construction and operation, of the transport systems specified in the section. Section 22 provides a definition for each of the transport systems.

10. Section 1(1)(b) gives the Scottish Ministers a power to authorise, by order, the construction and operation of an inland waterway. An inland waterway is defined in section 22 as including both natural and artificial waterways and therefore may include rivers, lochs and canals.

Section 2: Subject-matter of orders under sections 1

11. Section 2 provides details of the matters that can be contained within an order to provide the necessary authority to give effect to a proposed development.

12. Subsection (1) introduces schedule 1 which contains a non-exhaustive list of matters that may be contained within an order. Any matter within the proposed order would have to fall within the legislative competence of the Scottish Parliament (see section 29 of the Scotland Act 1998).

13. Subsection (2) allows an order to be made in relation to more than one scheme, system or mode of transport. This means that an order could contain details of matters that might need to take place at a number of locations in order for, for example, the creation of a system. The subsection also permits an order to contain provisions relating to more than one mode of transport.

14. In order to give effect to a particular proposal in a particular location it may be necessary to modify or amend other legislation. Subsection (3) provides the power to modify, amend or exclude any enactment relating to the purpose of the order. The provision in question under an order must be within devolved competence (see section 54 of the Scotland Act 1998) and therefore it may not be possible to modify the law on reserved matters such as the law relating to health and safety.
15. Subsection (4) enables the Scottish Ministers to include within an order any provision that they believe is necessary or expedient to give effect to an order or relevant earlier legislation.

16. Subsection (5) confirms that provision can be made in respect of fixed penalty notices for discharging liability for offences. Subsection (6) provides a definition of “fixed penalty notice”.

17. Subsection (7) means that a right of way cannot be extinguished unless either an alternative right of way has been or will be created, or there is no requirement for an alternative right of way.

Section 3: Crown land

18. Section 3(1)(a) enables a right over or in Crown land (not in itself being a Crown right) to be acquired through the order by compulsion with agreement from the appropriate authority. The right over or in Crown land may, for example, relate to a third party right of access over Crown land to provide access to a private dwelling. A right in Crown land can be acquired compulsorily if the interest is owned other than by the Crown as stipulated under subsection (3) and if the relevant Crown interest agrees, as set out in subsection (4).

19. Subsection (1)(b) allows a right belonging to the Crown to be affected by any provision in the Bill or an order made under the Bill with agreement from the appropriate authority (excluding compulsory acquisition). Subsection (1)(c) enables a third party right in land in which there is a Crown interest to be affected by section 18 of the Bill which enables the Scottish Ministers to grant promoters access to land for surveying purposes in relation to a transport proposal with agreement from the appropriate authority.

Procedure for making orders

Section 4: Applications

20. This section describes the process for the making of applications. Subsection (1) provides the Scottish Ministers with the power to make on application an order. The application has to be made in accordance with rules that will be made under this section.

21. Subsection (2) provides details of the matters on which the Scottish Ministers can make rules relating to the application, the documentation and information to be submitted in support of the application, the notice and publication arrangements and the conduct, scope and manner of the pre-application consultation.

22. Subsection (3) enables the rules to require the Scottish Ministers to provide an opinion on the information to be supplied with an application. This power could be exercised to scope the environmental information required in connection with a development. The subsection also covers publicity for that information.

23. Subsection (4)(a) provides that the rules under the section can require compliance with directions in relation to matters concerning relevant authorities providing information for a
project and pre-application consultation. Subsection (7) provides a non-exhaustive list of those bodies who may be required to provide information.

24. The ability for the Scottish Ministers to set fees for the making of applications is contained within subsection (6).

**Section 5: Cases where other Member States are affected**

25. This section clarifies the position in respect of the international obligations of the Scottish Ministers to ensure that other Member States of the European Economic Area (which includes the nations of the European Community plus Norway, Iceland and Lichtenstein) are notified of developments that are likely to affect them or are provided with information on request if they are likely to be significantly affected by any proposed development.

26. Subsection (1) provides the Scottish Ministers with power to make rules regarding the provision of information, the consultation process and how the Scottish Ministers will notify other Member States of matters relating to their decision.

27. Subsection (2) confirms the context for the actions of the Scottish Ministers, as described within the rules. Subsection (3) provides the reference for which states constitute a Member State.

**Section 6: Orders made otherwise than on application**

28. This section enables the Scottish Ministers to make an order to allow them to take whatever steps they believe are necessary or expedient to address the circumstances where a promoter or operator fails to comply with the terms under which authorisation of an order has been given or a promoter or operator abandons or neglects the works subsequent to their authorisation by an order. It also allows the Scottish Ministers to get rid of spent provisions in an earlier order and to bring forward themselves an order to authorise the construction and operation of works under section 1.

29. Subsection (1) sets out the circumstances in which the Scottish Ministers may act. Subsection (2) provides powers for the recovery of any costs incurred by the Scottish Ministers in suspending or discontinuing any operations under subsection (1) or in addressing any abandonment or neglect of any works. Subsection (3) provides details of the publication arrangements to which the Scottish Ministers must adhere if they act under the powers of this section.

**Section 7: Model provisions**

30. This section enables the Scottish Ministers to provide guidance to prospective applicants on the provisions that may be incorporated within their draft orders. Subsection (2) provides that different guidance may be issued for example to reflect the different circumstances of different types of project.
Section 8: Objections

31. Section 8 enables the Scottish Ministers to make rules in relation to objections made in respect of an application for an order (subsection (1)(a)(i)) or when they are making an order without an application being made to them (subsection (1)(a)(ii)).

32. Subsections (2) and (4) provide that the Scottish Ministers must take any objection into consideration before deciding whether or not to make an order, unless they decide to hold an inquiry or hearing, in which case, they must consider the report from the inquiry or hearing before making an order. Subsection (3) enables the Scottish Ministers to disregard an objection if it is withdrawn or they consider it to be frivolous or trivial or it relates to compensation. Subsection (5) states that rules may allow the Scottish Ministers to waive some of the rules under this section which would otherwise apply. In addition, the rules may allow the Scottish Ministers to require compliance with certain rules which would not otherwise comply.

Section 9: Inquiries and hearings

33. This section allows the Scottish Ministers to hold an inquiry or hearing into an application or a proposal for an order. It obligates, under subsection (3), the Scottish Ministers to hold an inquiry or hearing if it is requested by, and there is a valid objection from, a local authority or National Park authority in whose area works would be carried out, or someone subject to a compulsory purchase of their interest in land.

Section 10: Procedure at inquiries and hearings

34. This section allows the Scottish Ministers to make rules to regulate the proceedings of an examination, which may take the form of an inquiry or hearing.

35. Subsections (1) and (2) describe the matters which the rules may regulate. Subsections (3) and (4) ensure that for consistency of approach particular provisions of the Local Government (Scotland) Act 1973 which apply in respect of an inquiry or hearing under that Act will apply in similar circumstances to an examination carried out under the provisions of the Bill.

36. Subsection (5) requires the Council on Tribunals to be consulted on the making of any rules under this section.

Section 11: Making or refusal of orders under section 1

37. Subsection (1) provides for the circumstances to which this section relates namely when an application for an order has been made or there has been a proposal for an order without an application having been made.

38. Subsection (2) provides the power to make an order with or without modifications or not to make an order. Subsection (3) allows the Scottish Ministers not to make an order if they believe that there is another means by which the object of the order could be achieved. It is permissible under subsection (4) for the Scottish Ministers to make a determination to proceed
with certain elements of a proposal whilst making a separate determination in respect of, or deferring consideration of, other matters within the application.

39. In those instances when the Scottish Ministers propose to make substantial modifications to an applicant’s proposal the Scottish Ministers are, under subsection (5), under a duty to notify any person who is likely to be affected, to give that person a chance to make representations and to consider those representations.

40. Subsection (6) ensures that any order that is not subject to Parliamentary scrutiny comes into force when notice of the determination is published in the Edinburgh Gazette.

Section 12: Publicity for making or refusal of order

41. This section sets out the arrangements for the publicity for the making or refusal of an order.

42. A duty is placed on the Scottish Ministers to give notice to the persons as specified in subsection (1) and to publicise the notice in the Edinburgh Gazette, which is the official newspaper of record in Scotland and is the primary source for a range of official notices. The information that must be contained within the notice is set out in subsection (2). Subsection (3) ensures in those instances when there is a requirement for an order to be laid before the Scottish Parliament that the notice must advise that the order cannot come into force unless the Scottish Parliament by resolution approves the order.

43. Subsection (4), where it applies, also requires the notice to cover additional matters. Those matters relate to consideration of the environmental statement, a definition of which is provided within subsection (5).

44. Subsection (6) amplifies the information that must be contained within a notice in respect of certain environmental considerations. Subsection (7), supplemented by the definition in subsection (9), states that subsection (4) applies in relation to projects in a class as listed in the European Directives on the assessment of the effects of certain public and private projects on the environment.

45. Subsection (8) transposes an element of Directive 85/337/EEC (as amended by Directive 2003/35/EC, which provides for public participation in respect of plans and programmes relating to the environment and amends with regard to public participation and access to justice Council Directives 85/337/EEC and 96/61/EC) and means that any non-governmental organisation promoting environmental protection and meeting any requirements under the law shall be deemed to have an interest for the purposes of Article 10a(a) of Directive 85/337/EEC and rights capable of being impaired for the purposes of Article 10a(b) of the Directive and shall be able to challenge the substantive or procedural legality of decisions.

46. Subsection (9) provides the appropriate references.
47. Subsections (10) and (11) direct the Scottish Ministers to send a copy of their determination notice containing such information as relates to the environmental statement to persons who made an objection, those who made a representation or those that made both a representation and an objection.

48. Subsection (12)(a) directs, in those instances where the Scottish Ministers make a determination on an application, the promoter to make arrangements to publish in a local newspaper a copy of the Scottish Ministers’ determination, the reasons for the determination, the matters taken into consideration and the extent of public participation in the process prior to the decision and information as to the right of challenging the decision. Under subsection (12)(b) the Scottish Ministers are obliged to publish similar information in respect of a development which they have promoted.

49. Once an order has been made the person who applied for the order or the Scottish Ministers, if they have made an order without an application being made to them, must place with the Scottish Parliament a copy of the order and such documentation as is described in subsection (13)(a) and deposit with the local authority and the National Park authority within whose area the proposed works are to take place a copy of the order and documents as described in subsection (13)(b). Subsection (14) dis-applies subsection (13)(a) for developments of national significance or otherwise considered by the Scottish Parliament under section 13.

50. Subsection (16) places a duty on a relevant authority to make the deposited documentation available for inspection by any person, free of charge at all reasonable hours.

Section 13: “Developments of national significance” etc.: special procedure

51. This section obliges the Scottish Ministers to seek an affirmative resolution for any order containing provisions which authorise a national development as designated within the National Planning Framework. The section also permits the Scottish Ministers to seek, if they so wish, an affirmative resolution for any order in respect of a proposal that is not designated as involving a national development.

52. Subsections (4) and (5) place a duty on the Scottish Ministers to publish certain information in the Edinburgh Gazette and a local newspaper once the Scottish Parliament has decided whether to approve an order.

Consents etc. under other enactments

Section 14: Consents etc. under other enactments

53. This section enables consents, permissions or licenses relevant to an application or proposal to be considered and dealt with through an order. Subsection (3) provides for the Scottish Ministers to make regulations in relation to consents which would not otherwise be granted through the order under section 1. Subsections (4) and (5) set out what the Scottish Ministers may cover in the regulations.
Section 15: Town and country planning

54. This section enables the Scottish Ministers by way of an order under section 1 to grant planning permission for a development. Subsection (2) makes an insertion into the Town and Country Planning (Scotland) Act 1997 so as to cover land blighted by a development pursuant to an order under section 1.

Miscellaneous

Section 16: Validity of orders under section 1

55. This section provides details of how orders may be challenged. Subsection (1) sets out the grounds of challenge and the period of time within which a challenge can be made. Subsection (2) provides details of when the challenge period starts to run. Subsection (3) describes how the Court of Session may act in relation to any challenge made and subsection (4) confirms that any challenge can only be made within the designated 42 day period as described in subsections (1) and (2).

Section 17: Power of certain bodies to apply for, or object to, order under section 1

56. This section clarifies the powers of certain bodies to apply for or object to an order. Subsection (1) confirms that any body which has a current power to promote or oppose a Bill whether in the Scottish Parliament or the Parliament of the United Kingdom will also have a similar power in respect of an order made under the Bill. This ensures that there is no gap in the powers of such bodies.

57. Section 17 of the Transport Act 1962 was amended by the insertion of subsection (1A) by the Scotland Act 1998 (Cross Border Public Authorities)(Adaption of Functions etc.) (No 2) Order 2000 and provides that the British Waterways Board may, with the consent of the Scottish Ministers, promote and oppose Bills in the Scottish Parliament. Section 17(1) makes equivalent provision in respect of the UK Parliament. Section 17(3) of the Bill enables the British Waterways Board to promote or object to an order without the consent of the Scottish Ministers.

58. Subsection (4) states that any other person may apply for or object to an order. The statement clarifies that the section is merely enabling in respect of the bodies covered by it and so it does not limit the powers of other persons to apply for or oppose an order.

Section 18: Access to land

59. Subsection (1)(a) permits the Scottish Ministers to set up a regime to authorise prospective applicants to access land for the purposes of informing an application for an order.

60. There are a number of matters described in a non-exhaustive list at subsection (2) that the Scottish Ministers may cover in an order providing the access regime. These matters might include establishing criteria as to whether the prospective applicant is a fit and proper person that is acting in good faith and has a genuine reason for wishing to seek access to the land; the manner and notification of application; and permitting the person who wishes to enter the land and the person whose land may be entered an opportunity to make representations.
61. The Scottish Ministers may consider under subsection (2)(a)(vi) attaching conditions and limitations to any authorisation. That is so as to ensure that the person entering land conducts their business in a safe and secure manner and that entry is planned in a manner that takes full cognisance of the interests that prevail on that land i.e. on agricultural land cropping and lambing times for instance would need to be factored into the times and duration of entry, similarly entry to land on which rail or other operations are conducted might mean that particular conditions of entry will apply. The Scottish Ministers may make provision within the rules for statutory undertakers who are considered worthy of special protection against the prospective promoter taking access to land on which the undertakers have apparatus.

62. Under subsection (2)(a)(x) and (b)(vii) provision may be made that if the person whose land is affected refuses entry a prospective promoter may make an application to a Sheriff for a warrant to enter the land.

63. Subsection (1)(b) permits also the Scottish Ministers by order to enter land and subsection (2)(b) describes in a non-exhaustive list matters that the Scottish Ministers may contain within an order providing such an access regime.

Section 19: Service of notices and other documents

64. This section provides details of how a notice or a document can be served and on whom it should be served. Subsections (1)(c) and (2) set the context within which documents can be communicated electronically. Subsection (4) describes the proper address for the serving of notices by post. In those instances where the proper address cannot be ascertained and the matter relates to an interest in, or to the occupier of, land, subsection (5) provides for a notice to be addressed to either the owner or as the case may be the occupier and left with a person resident or employed on the land or affixed to a building or object on the land.

Section 20: Annual report

65. The section places the Scottish Ministers under a duty to prepare an annual report, by 1st October each year, of the operation of the order-making process. Subsection (2) provides details of some of the matters that are to be contained within the report. Under subsection (3) a copy of the report is to be laid in the Scottish Parliament as well as being published.

Section 21: Orders under the Light Railway Act 1896

66. The section ensures that an order for the purposes of constructing or operating a light railway that previously would have been made under the Light Railways Act 1896 can no longer be made by the Scottish Ministers under that Act.

Section 22: Interpretation

67. The section defines terms used within Part 1.
PART 2: MISCELLANEOUS AMENDMENTS

Section 23: Amendment of Roads (Scotland) Act 1984

68. Subsection (2) through the insertion of new section 143A obligates the Scottish Ministers to seek an affirmative resolution from the Scottish Parliament in respect of an order authorising any future road developments that constitute a national development. It also provides the Scottish Ministers, within paragraph (2)(b), with the discretion to seek Parliamentary approval, by means of an affirmative procedure, for any other road scheme on the trunk network.

69. Subsection (3) inserts a new paragraph 1A to Schedule 2 of the Roads (Scotland) Act 1984 which details the publicity arrangements of any roads order or scheme that has been approved by the Scottish Parliament.

Section 24: Amendment of Harbours Act 1964

70. Subsection (2) through the insertion of new section 54A obligates the Scottish Ministers to seek an affirmative resolution from the Scottish Parliament in respect of an order authorising any future harbour developments that constitute a national development. It also provides the Scottish Ministers within subsection (2)(b) with the discretion to seek Parliamentary approval, by means of an affirmative procedure, for any other harbour scheme.

71. Subsection (3) describes changes to the Act as a consequence of the insertion of section 54A and provides details of the publicity arrangements for a harbour order that has been approved by the Scottish Parliament.

Section 25: Amendment of Pilotage Act 1987

72. This section introduces a new section 1A into the Pilotage Act 1987 to improve notification provisions and permit the Scottish Ministers in those cases where there are unresolved objections to a proposal to determine the procedure for detailed consideration of those objections.

73. The new subsection (1) details the notification provisions. The Scottish Ministers must before making an order give notice by advertisement in at least one newspaper (subsection (1)(a)(i)) and the Edinburgh Gazette (subsection (1)(a)(ii)). The Scottish Ministers are also obliged to provide a copy to any other persons that might be affected. This may include parties who are engaged in shipping movements but who may not have access to a local newspaper or the Edinburgh Gazette.

74. The new subsection (2) details the notification provisions that are to apply when a harbour authority which is not a competent harbour authority (i.e. a harbour authority which has statutory powers in relation to the regulation of shipping movements and the safety of navigation within its harbour and whose harbour falls wholly or partly within an active former Pilotage district) makes an application to the Scottish Ministers to be a competent harbour authority. The notification provisions require the harbour authority to give notice by advertisement in at least one newspaper (paragraph (a)(i)) and the Edinburgh Gazette (paragraph (a)(ii)). The harbour
authority is also obliged to provide a copy to any other persons that might be affected. This may include parties who are engaged in shipping movements but may not have access either to a local newspaper or the Edinburgh Gazette.

75. The new subsection (3) provides details of the content of the notice. The notice must contain a summary of the proposed order, the place where a copy may be inspected and specify a time period of at least 42 days during which affected persons will have an opportunity to make an objection.

76. The new subsection (4) provides a statutory right for a public local inquiry or hearing when a harbour authority affected by the proposal raises an objection. Subsection (5) provides that any other objections unless they are considered frivolous or trivial are to be considered at an inquiry, hearing or by written representation.

77. Following consideration of a report from an inquiry or hearing or of written representations, as the case may be, the Scottish Ministers under the new subsection (6) may either make the order as proposed, make the order with modifications or decide not to make the order.

78. The new subsection (7) provides for public notification that the order has been made. It also places a duty to notify those persons who received a copy of the original notice that was issued under the provisions of subsections (1) and (2).

79. The new subsection (8) provides for the detail that must be contained within the notice notifying the making of an order.

Section 26: Amendment of Transport (Scotland) Act 2001

80. This section inserts new subsections (1A) and (1B) into section 70 of the Transport (Scotland) Act 2001.

81. New subsection (1A) allows the Scottish Ministers to make a grant or loan in respect of the purchase of eligible properties the use or enjoyment of which are or may be adversely affected by the construction or operation of a development authorised under section 1 of this Bill or by a development authorised through earlier legislation but which, had it been in place at the time, could have been authorised by provisions within this Bill.

82. New subsection (1B) provides a definition of eligible property and advises that it does not relate to properties the purchase of which is necessary in order to construct or operate the transport development. That is because subsection (1) of section 70 is considered to provide for purposes where the acquisition of properties are required for the construction or operation of a transport development.
PART 3: GENERAL

Section 27: Further provision as regards rules, regulations and orders

83. Subsection (6) provides the Scottish Ministers with powers to make incidental, supplemental, consequential, transitional, transitory or saving provisions. That, with the powers in subsection (7), allows the Scottish Ministers to make provision for ancillary matters and to enable unforeseen circumstances to be addressed which may arise following the enactment of the Bill without having to have recourse to primary legislation. The scope of the power is restricted. It can only be used to make provisions which are of an incidental, supplemental, consequential, transitional, transitory or saving nature.

Section 28: Modification and repeal of enactments

84. Subsection (1) indicates that schedule 2 to the Bill contains a list of enactments that are modified by the Bill.

85. Subsection (2) indicates that schedule 3 to the Bill contains a list of enactments that are repealed by the Bill.

Section 29: Short title and commencement

86. Subsection (1) provides the short title, which is the name by which the Bill if enacted may be cited.

87. Subsection (2) deals with commencement. It is for the Scottish Ministers, as explained in subsection (3), to make provision commencing the Act.

SCHEDULES

Schedule 1: Matters within section 1

88. The schedule contains a non-exhaustive list of the matters that may be addressed within an order made under section 1.

Schedule 2: Modification of enactments

89. The schedule contains consequential modifications to earlier Acts in order to give effect to the provisions of the Bill.

Schedule 3: Repeals

90. The schedule details the repeals within various enactments that are necessary to dis-apply special Parliamentary procedure in respect of road and harbour developments and pilotage.
FINANCIAL MEMORANDUM

INTRODUCTION

91. This memorandum sets out the financial implications of the Transport and Works (Scotland) Bill.

Background

92. Since devolution, the authorisation of public transport infrastructure in Scotland (except roads) has occurred through the Scottish Parliament’s Private Bills process. In May 2005, the Scottish Parliament recommended that a new statutory system should be introduced for handling transport applications in Scotland and the Scottish Executive agreed to bring forward a Bill in response to this recommendation.

93. The main proposals in the Bill seek to replace the Private Bills process used for authorising transport projects with a system that places the Scottish Ministers at the centre of an order-making process subject to appropriate Parliamentary scrutiny. In broad financial terms, this will mean a small decrease in Scottish Parliament administration costs, a small increase in administrative costs for the Scottish Executive, and a possible increase in costs for the promoter of a transport project in return for greater process efficiency and certainty.

94. The Bill also contains provisions relating to special Parliamentary procedure (SPP), provisions modifying existing transport legislation and a section on the purchase of eligible properties. Scottish Parliament officials requested, as part of the modernisation of procedures, that the Scottish Executive consider the inclusion of provisions in this Bill to remove the use of SPP in relation to transport. The use of SPP is seen as a potentially burdensome, disproportionate mechanism for the Scottish Parliament. The Scottish Executive does not expect significant routine resource implications to be associated with its proposals on SPP, given the rarity with which SPP is currently used. Sections 23, 24 and 25 of the Bill make modifications to existing road, harbour and pilotage legislation to improve conformity of approach and the communication of information. No significant resource implications are anticipated for these sections in the Bill.

95. The section on the purchase of properties (section 26) relates only to circumstances where a promoter in receipt of funding from the Scottish Executive for a particular transport development wishes to operate a voluntary purchase scheme. The funds for operating such a scheme will need to be found from within the contribution provided by the Scottish Executive to the promoter for that particular transport development.

96. The Transport and Works (Scotland) Bill team costs associated with taking the primary and secondary legislation through the Scottish Parliament are covered by existing Scottish Executive staff resources and are therefore excluded from this memorandum.
PART 1: ORDERS AUTHORIZING WORKS (SECTIONS 1 – 22 OF THE BILL)

Summary

- There will be a decrease in Scottish Parliament costs by £85K for each project.
- There will be an increase in Scottish Executive costs of £53K for each project.
- There is likely to be an increase in application costs incurred by the promoter of about 17% for each project. For a large-scale transport project, this could translate into an increase of £1029K compared to the current situation.

97. A broad comparison of costs incurred under the Private Bills process and under the Bill’s proposals is set out in Table 1. The evidence base for many of the figures in the memorandum has been costs associated with previous transport Private Bills, therefore the costs reflect a large-scale transport project. For a detailed comparison of the Private Bills existing costs and the Transport and Works (Scotland) Bill proposals, see Annex A.

Table 1: Summary comparison of costs under the Private Bills process and the Transport and Works (Scotland) Bill

<table>
<thead>
<tr>
<th></th>
<th>Private Bills process</th>
<th>Transport and Works (Scotland) Bill</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scottish Parliament</td>
<td>85 ²</td>
<td>N/A</td>
</tr>
<tr>
<td>Scottish Executive</td>
<td>N/A</td>
<td>53</td>
</tr>
<tr>
<td>Promoter</td>
<td>6024</td>
<td>7053</td>
</tr>
<tr>
<td>Total</td>
<td>6109</td>
<td>7106</td>
</tr>
</tbody>
</table>

98. Although the net impact in Table 1 includes an increased cost of about £1,000K to the promoter of a large-scale project, in return, the new process will be more efficient, creating more certainty and enabling better management of a project.

99. The financial memorandum considers the financial impact on the following bodies or people (the figures in brackets indicate the relevant paragraph in the memorandum):

Scottish Administration³ (109)
Promoter (119)
Scottish Parliament (124)
Statutory consultees⁴ and other bodies (127)
Local Authorities/National Parks Authorities (130)
Public (132)

¹ Including the following: Stirling-Alloa-Kincardine, Edinburgh Tram Line 1, Edinburgh Tram Line 2, Edinburgh Tram Line 3 (initial stages), Edinburgh Airport Rail Link, Waverley Railway.
² Excludes MSP time.
³ Including the Scottish Executive, Scottish Executive Inquiry and Reporters Unit (SEIRU) and Historic Scotland (who will influence the process as one of the statutory consultees but is covered as part of the Scottish Administration costs).
⁴ Such as Scottish Natural Heritage (SNH) and the Scottish Environment Protection Agency (SEPA).
These documents relate to the Transport and Works (Scotland) Bill (SP Bill 66) as introduced in the Scottish Parliament on 26 June 2006

100. A summary of the net financial implications by sector for a typical project is provided in Table 2.

Table 2: Summary of net financial impact for each project promoted under the Transport and Works (Scotland) Bill by sector

<table>
<thead>
<tr>
<th>£K</th>
<th>SE⁵</th>
<th>Promoter</th>
<th>SP⁶ (savings)</th>
<th>Statutory consultees and other bodies</th>
<th>LA⁷</th>
<th>Public</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-application consultation and engagement</td>
<td>27.6</td>
<td>1000⁶</td>
<td>(-8.3)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Submitting application and preparing for representation period</td>
<td>0.9</td>
<td>9</td>
<td>(-2.2)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Representation period</td>
<td>14.3</td>
<td>-</td>
<td>(-9.3)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Detailed consideration</td>
<td>-</td>
<td>20</td>
<td>(-65)</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Review of detailed consideration</td>
<td>2.9</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Finalising the legislation</td>
<td>3.7</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Annual report</td>
<td>3.4</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>52.8</strong></td>
<td><strong>1029</strong></td>
<td><strong>(-84.8)</strong></td>
<td>0</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>

Cost Variation and Project Scale

101. The Scottish Executive expects there to be variation in the process costs, particularly in relation to the level of consultation and engagement and the duration of any examination, given that the scale of a project may vary substantially. For instance, authorisation may be required for Network Rail to add a 1km piece of shunting track to a railway line, because it would involve a compulsory purchase order. Alternatively, authorisation is likely to be required for a local authority to introduce a tram system into one of Scotland’s cities. Hence, the same authorisation process is likely to be used for projects of a very different scale. It is possible that more smaller projects will come forward as potential promoters may view the new process more attractive than the current Private Bill process. That, however, is mere speculation and is mentioned purely for interest; no account has been taken of this within the financial memorandum.

---

⁵ Scottish Executive
⁶ Scottish Parliament
⁷ Local Authorities and National Park authorities
⁸ This figure is based on the average cost of pre-application design and consultation for transport Private Bills projects (£6000K). An assumption is made of an additional cost of £1000k incurred due to additional statutory requirements at this stage under the Bill.
102. It is interesting to compare the cost associated with different stages in the new process, particularly the pre-application activity compared to the administrative process. The pre-application consultation and engagement cost is £7027.6K\(^9\) compared to £78.2K\(^{10}\) for the administration of the formal authorisation process. This demonstrates two points; firstly, that the scale of a project is vital to accurately determining the total cost. The impact of this on the financial memorandum is that the estimates reflect larger-scale projects, since the figures have been largely based on the transport Private Bills to date. In terms of the cost range of a particular project under the Transport and Works (Scotland) Bill proposals, this could vary from a total cost of less than £1,000K for a relatively small-scale project to £10,000K for a large-scale project.

103. The second point is that the Scottish Executive believes that the process should be front-loaded in order to achieve a highly efficient administrative process in terms of the representation period, examination and final decision by the Scottish Ministers. Frontloading ensures that as much information as possible is available at the start of the process. One of the benefits of such an approach is that pre-application scrutiny should expose poorly-prepared applications at a relatively early stage in the process and thus generate savings on the administrative side of the process. In contrast to the current Private Bills process, the ability to refuse an application on the basis that the promoter has not conducted a meaningful engagement exercise means that for each application refused, there could be an administrative saving of about £22K\(^{11}\). However, official support and guidance to the promoter during the pre-application period should mean that this mechanism rarely, if ever, occurs.

104. All of the costs outlined in this memorandum are associated with taking one project through the process as proposed in the Bill. It is difficult to estimate costs on an annual basis as there is uncertainty about the number of projects that will be processed through the system in any one year. The volume of projects will largely depend on Scottish Executive transport policy (policy documents including Regional Transport Strategies, Strategic Project Reviews and the National Planning Framework will have a key role in this business planning) and, to a lesser extent, the will of external bodies who wish to act as promoters for their own projects.

105. The Scottish Executive does not expect there to be any direct impact on large or small business. Nor does it anticipate there being any disproportionate impact on rural or island communities.

**VAT**

106. Her Majesty’s Revenue and Customs have confirmed that provision in the Bill for the Scottish Executive to levy fees against the promoter in return for submitting an application are outwith the scope of VAT.

---

\(^{9}\) Total cost of pre-application consultation and engagement incurred by the promoter (£7000K) and the administration cost to the Scottish Executive of pre-application advice and guidance (£27.6K).

\(^{10}\) Total cost of administering an application through the new process from submitting the application to finalising the legislation and producing the annual report.

\(^{11}\) Total cost of process stages from the application being submitted to the making of an order.
Consultation

107. The consultation paper relating to the proposed Bill\textsuperscript{12} did not specifically address the financial implications from the Bill. However, in early May 2006, the Scottish Executive conducted two roundtable meetings on the Transport and Works (Scotland) Bill with relevant stakeholders\textsuperscript{13}. The stakeholders were consulted on the financial implications of the Bill at these meetings.

108. Stakeholders were content with the financial implications. In relation to the potential additional costs associated with pre-application consultation and engagement and publicity for the promoter, there was a view expressed that good promoters would already be working in line with the Bill’s proposals i.e. would be conducting an in-depth and extensive consultation and engagement process, generating and providing publicity material in excess of the minimum requirements as set out for the Private Bills process. Hence, to these promoters, the more stringent requirements under the Transport and Works (Scotland) Bill may not represent an increased cost and the promoter may only incur an additional cost through fees. This memorandum attempts to reflect that distinction between increases in costs incurred under the Bill and standard costs that are inherent to promoting a transport project.

COSTS ON THE SCOTTISH ADMINISTRATION

Summary

- There will be an increase in staff costs for the Scottish Executive of £53K\textsuperscript{14}.
- There will be an increase in costs for the Scottish Executive Inquiry and Reporters Unit (SEIRU) of £20K, although it is expected that this cost will be borne by the promoter\textsuperscript{15}.
- The impact on Historic Scotland will be cost neutral.

Detail

109. As transport is largely devolved, the overall management of the Scottish transport system is the responsibility of the Scottish Executive. Although Scottish Ministers may act as a promoter in the proposed system, this section will focus on costs incurred by the Scottish Executive through its administrative and management function. The Scottish Executive expects the Scottish Executive Inquiry and Reporters Unit (SEIRU) to perform the task of the independent reporter as part of the process, meaning that costs will also be incurred by them.

\textsuperscript{12} “Proposal for a new approach to delivering public transport infrastructure developments” published by the Scottish Executive.
\textsuperscript{13} Participants included Network Rail, the British Waterways Board, Strathclyde Partnership for Transport, Transport Scotland, various solicitors who have supported transport Private Bills, SNH, SEPA, Historic Scotland and the Scottish Council for Development and Industry.
\textsuperscript{14} This represents an increase of 0.6% to the Scottish Executive Transport Group (including Transport Scotland) running costs for 2005/2006.
\textsuperscript{15} This represents an increase of 0.9% to SEIRU running costs for 2005/2006.
110. Generally, **we expect the promoter to cover the costs incurred by the Scottish Executive in processing an application** although the Scottish Executive does not propose, at this stage, to include staff costs in this. The Scottish Executive is still considering the best way of retrieving the costs of the process from the promoter. We will cover the details of the fees in secondary legislation, which the Scottish Parliament will have an opportunity to scrutinise separately\(^{16}\). At present, the Scottish Executive expects that the cost of the examination will be borne by the promoter.

111. The administration and management of the new process will involve an increase in staff costs within the Scottish Executive at several stages in the process. The costs incurred by SEIRU will relate to a reporter conducting a detailed examination of the transport proposal. In addition, Historic Scotland, will be involved in the promoter’s Environmental Impact Assessment. Having consulted with Historic Scotland, since they are already engaged with similar processes under the existing Private Bill procedure, it is not anticipated that additional costs will be accrued by Historic Scotland as a result of this Bill.

**Staff costs**

112. Scottish Executive officials will be required to administer and manage the new transport authorisation process. Work by various grades of policy officials and a solicitor (a C1, B3, B1 and A3 policy official and C1 solicitor) will be required at different stages in the process. **The total increased cost in relation to work required on one project is expected to be about £53K**\(^ {17}\). The Scottish Executive proposes to provide a scoping decision on the promoter’s Environmental Impact Assessment as part of their application package. Given the specialist and infrequent demand for this work, the Scottish Executive believes that the work would best be carried out by consultants. We expect the cost to be about £5K\(^ {18}\).

113. Information regarding staff costs is broken down in Table 3 (the columns denote the member of staff and the rows denote the stage in the process at which their input is required):

---

\(^{16}\) The Transport and Works Act 1992 (TWA), which applies in England and Wales, bases its fees on the size of the proposed development and the type of development. For illustrative purposes, the TWA fee for a transport system that will involve compulsory acquisition of land for the first hectare is £6,600. There are then incremental supplements from £1,100 to £275 per hectare according to the size of land. The Scottish Executive plans to bring forward secondary legislation which will include details on fees in September 2007 and will be the subject of a regulatory impact assessment.

\(^{17}\) All costs include National Insurance, overheads and are based on Scottish Executive salary levels at August 2004.

\(^{18}\) This cost has been estimated based on equivalent contracts that take place in relation to road developments.
These documents relate to the Transport and Works (Scotland) Bill (SP Bill 66) as introduced in the Scottish Parliament on 26 June 2006

Table 3: Summary of staff costs expected to be incurred by the Scottish Executive

<table>
<thead>
<tr>
<th>£K</th>
<th>C1 (Policy)</th>
<th>B3</th>
<th>B1</th>
<th>A3</th>
<th>C1 (Solicitor)</th>
<th>Consultant (EIA)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-application consultation and engagement</td>
<td>-</td>
<td>19.8</td>
<td>-</td>
<td>1.6</td>
<td>1.2</td>
<td>5</td>
<td>27.6</td>
</tr>
<tr>
<td>Submitting application and preparing for representation period</td>
<td>-</td>
<td>-</td>
<td>0.9</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>0.9</td>
</tr>
<tr>
<td>Representation period</td>
<td>-</td>
<td>6.8</td>
<td>4.3</td>
<td>3.2</td>
<td>-</td>
<td>-</td>
<td>14.3</td>
</tr>
<tr>
<td>Review of detailed consideration</td>
<td>1.2</td>
<td>1.7</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>2.9</td>
</tr>
<tr>
<td>Making the Order</td>
<td>-</td>
<td>1.7</td>
<td>-</td>
<td>0.8</td>
<td>1.2</td>
<td>-</td>
<td>3.7</td>
</tr>
<tr>
<td>Annual report</td>
<td>-</td>
<td>3.4</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>3.4</td>
</tr>
<tr>
<td>Total</td>
<td>1.2</td>
<td>33.4</td>
<td>5.2</td>
<td>5.6</td>
<td>2.4</td>
<td>5</td>
<td>52.8</td>
</tr>
</tbody>
</table>

114. The total is just over half the staff cost compared to the Scottish Parliament staff cost associated with the Private Bills process (£85K). Much of this cost is absorbed by official support to the Private Bill Committee over a period of, on average, 19 months. Without this, the Private Bills staff cost is reduced to £20K. The additional cost under the Transport and Works (Scotland) Bill's proposals is largely associated with the pre-application advice and guidance provided by Scottish Executive officials to the promoter, which represents about £28K of the total.

Scottish Executive Inquiry and Reporters Unit (SEIRU)

115. We expect SEIRU to undertake a detailed examination of the application. Although not required under the Bill, the expectation is that most applications will warrant some form of examination.

116. Using information from the passage of previous transport Private Bills and the time spent by MSPs involved in them, the Scottish Executive estimates that an average transport application may take 3 weeks to examine and 9 weeks to write the report, making 12 weeks in total\(^\text{19}\). At present, a reporter’s services are charged at £275 per day, which would mean the total cost of using a reporter for a transport project is likely to be about £16.5K. In addition, we expect supplementary costs to be incurred by SEIRU including the hiring of a hall, reporter

---

\(^{19}\) This average duration for a reporter’s examination is based on the number of hours spent by MSPs on transport Private Bill Committees. Given that there are usually 5 MSPs on a Committee, an average of 277.5 hours is spent on a Private Bill hearing evidence. This equates to about 7 weeks in man hours excluding background work undertaken. Given the front-loading process set out in the Bill, and the use of a reporter, we expect this time to be cut to about 3 weeks. Reporters work on the basis of 1 week of inquiry to 3 weeks of reporting. This creates a total of 12 weeks of the reporter’s time.
travel and subsistence, cost of experts and their travel and subsistence. The Scottish Executive expects this additional cost to total about £3K.\textsuperscript{20}

117. Based on time spent on transport Private Bills and information provided by SEIRU, the Scottish Executive expects the \textbf{total cost to SEIRU of conducting a detailed examination of a transport proposal to be about £20K}.\textsuperscript{21} The greater use of pre-application engagement and consultation should reduce the number of objections to be heard at an examination and a wider range of options for conducting an examination should also reduce the excess cost associated with a long-running inquiry.

118. As this cost is likely to be recovered from the promoter, the impact on SEIRU’s running costs will be neutral. However, it will have implications for their business planning.

\section*{COSTS ON THE PROMOTER}

\subsection*{Summary}

- The promoter will on average incur a cost of £7053K for the authorisation of a transport project. This reflects about 2\% of the total project cost for a transport development.\textsuperscript{22}
- This is an increase of £1029K compared to the Private Bills process. The figure represents a percentage increase of 17\% compared to the present cost of the authorisation process under the Private Bills process.\textsuperscript{23}
- Some promoters may already be following good practice in relation to engagement and publicity as formalised in the Bill. If this is the case, the promoter will only incur an increase in costs through the fees.\textsuperscript{24}

\textsuperscript{20} This is based on an assumption that the cost of reporter travel and subsistence is £30 per day and that the hire of a hall is £150 per day. This totals £180 per day. On the basis of a public examination duration being 3 weeks (15 days), this creates a total of £2.7K. In addition, there may be expenses associated with using experts.
\textsuperscript{21} This can be compared to the cost of the M74 inquiry which was £42K, more than double what we expect the examination to cost under the Bill’s provisions. Although there is a large difference between the two figures, we expect a number of provisions in the Bill to reduce the cost of an examination. The duration of the M74 inquiry itself was about 3 months.
\textsuperscript{22} The total cost of the Edinburgh tram projects is expected to be £634000k. For each tram line, it is therefore £317000k. As a percentage of the total cost of a project like the Edinburgh trams, the cost to the promoter of pre-application consultation and engagement is (£7053k as a percentage of £317000k) 2.2\% of the total cost.
\textsuperscript{23} The 17\% increase is calculated from an increase in costs to the promoter of pre-application consultation and engagement from £6024k to £7053k. This includes the assumption that the promoter will meet the cost of an examination.
\textsuperscript{24} Although the fees will be set through secondary legislation, if the fee were to reflect the cost of an average examination, this would be £20k. The current Private Bills fee is £1.25k for charities and non-profit making organisations and £5k for everyone else. On this basis, the fee may represent an increase of £18.75k and £15k respectively, although the policy has yet to be determined. Executive consultation will take place before any rules are produced in respect of the setting of fees. The rules will be subject to Parliamentary approval and a comprehensive regulatory impact assessment will be produced at that time.
Detail

119. When considering the financial implications of the process, it is important to make the distinction between the role of a promoter and those bodies that may also have input into the process as a result of their primary function. Major steps have been taken recently in establishing a system to deliver transport projects strategically, including the setting up of Transport Scotland and the Regional Transport Partnerships (RTPs). We expect that these two bodies together with Network Rail and the British Waterways Board are the most likely future promoters. However, other bodies including local authorities, private individuals and charities may also act as promoters in the proposed Bill. Because promotion is a voluntary role, any costs incurred by promoters will be dealt with under this section as opposed to under sections relating to the function of various promoters.

120. The costs for the promoter are expected to rise compared to the Private Bills process, particularly in relation to pre-application consultation and engagement, publicity and the expected additional cost of the detailed examination, charged to the promoter through fees (although a scale of fees is still to be determined through secondary legislation; see paragraph 110). In return, the Scottish Executive expects to deliver a more efficient process. This increased investment at the start of the process ought to reduce the number of objections to an application (many of which come about because of a lack of information and communication), and generate greater certainty and direction around the formal examination and assessment of the proposal.

121. Secondary legislation from the Bill will require promoters to conduct a greater level of engagement and consultation with parties compared with the current Private Bill requirements (prior to submitting an application). However, effective promoters are currently conducting pre-application consultation and engagement in a manner consistent with the expected requirements of the Bill. Therefore, for those promoters, there will be no additional cost associated with pre-application work under the Transport and Works (Scotland) Bill. We also expect the promoter to arrange publicity on the proposal at various stages in the process in order to ensure that the public is fully informed about their proposals. Again, this may already be done by certain promoters and therefore would represent no additional cost, hence requirements on pre-application work and publicity as set out in the Bill may represent no additional cost to certain promoters of a transport project.

122. The authorisation process of a new project under the Bill is expected to cost £7053K. The costs are based on evidence from the transport-related Private Bills. Although £7053K seems like a substantial amount of money, it largely reflects the costs incurred by promoters under the current Private Bills process. The additional cost (17% increase) is explained through more specific work on route design (partly generated through the ability to access land), more extensive engagement with those affected by the proposal and increased publicity, making use of the internet to ensure widespread knowledge about the proposals and the possibility of incurring a fee comparable to the cost of the examination.

---

25 Costings from each of the tram projects was used to reach an average figure of £6000K for consultation work on a Private Bill. An assumption has been made that an extra £1000K may be necessary to comply with engagement requirements in the Bill.
123. Table 4 sets out the expected costs for the promoter.

### Table 4: Summary of costs expected to be incurred by a promoter

<table>
<thead>
<tr>
<th>Stage in process</th>
<th>How costs are incurred</th>
<th>Estimated cost (£K)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-application consultation and generating application</td>
<td>Consultation, engagement, design and development, surveys, research, administration, publicity.</td>
<td>7000</td>
</tr>
<tr>
<td>Submitting application and preparation for representation period</td>
<td>Adverts in newspapers Place information on internet (website)</td>
<td>33</td>
</tr>
<tr>
<td>Detailed consideration</td>
<td>Cost of examination ( invoiced SEIRU’s costs through fees)</td>
<td>20</td>
</tr>
<tr>
<td>Total</td>
<td></td>
<td>7053</td>
</tr>
</tbody>
</table>

**SAVINGS TO THE SCOTTISH PARLIAMENT**

**Summary**

- There will be a decrease in staff costs for the Scottish Parliament of £85K.
- There will be a saving of 280 MSP hours per project.

**Detail**

124. By removing the requirement for a Private Bill for a transport-related project, we anticipate that there will be a saving in staff costs to the Parliament. There will also be a notional saving in MSPs’ time although this is not a concrete saving as MSPs will utilise up this “saved” time with other pressing business. However, it is noted below nonetheless.

**Staff costs**

125. The savings in staff time\(^{26}\) and according to the relevant stage in the new process is outlined in Table 5. Using data provided by the Scottish Parliament, the Scottish Executive expects **the total savings on staff costs to be about £85K**. Much of this cost is generated by official support to the Private Bills Committee.

\(^{26}\) These figures are based on the equivalent Scottish Executive staff costs according to grade. The evidence is based on oral evidence from the Private Bills Unit.
These documents relate to the Transport and Works (Scotland) Bill (SP Bill 66) as introduced in the Scottish Parliament on 26 June 2006

Table 5: Summary of savings expected to be incurred by the Scottish Parliament

<table>
<thead>
<tr>
<th>£K</th>
<th>B3</th>
<th>B1</th>
<th>A3</th>
<th>C1 (Solicitor)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Pre-application consultation and engagement</td>
<td>4.3</td>
<td>1.6</td>
<td>1.2</td>
<td>1.2</td>
<td>8.3</td>
</tr>
<tr>
<td>Submitting application and preparing for representation period</td>
<td>1.3</td>
<td>0.9</td>
<td>-</td>
<td>-</td>
<td>2.2</td>
</tr>
<tr>
<td>Objection period</td>
<td>3.4</td>
<td>4.3</td>
<td>1.6</td>
<td>-</td>
<td>9.3</td>
</tr>
<tr>
<td>Support to Private Bills Committee</td>
<td>65</td>
<td>-</td>
<td>-</td>
<td>-</td>
<td>65</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>74</strong></td>
<td><strong>6.8</strong></td>
<td><strong>2.8</strong></td>
<td><strong>1.2</strong></td>
<td><strong>84.8</strong></td>
</tr>
</tbody>
</table>

MSP costs

126. Based on the experience of 3 transport Private Bills, we expect the average number of “recordable” MSP hours saved to be about 280 hours per Private Bill. This excludes any background work conducted by MSPs sitting on a Private Bill Committee. However, it does not seem meaningful to translate this into a financial saving as the Bill will only free up MSP time, which will be recycled into other Parliamentary business.

IMPACT ON STATUTORY CONSULTEES AND OTHER BODIES

Summary

- The impact on SNH and SEPA will be cost neutral.
- The impact on other bodies will not be significant.

Detail

127. We expect other bodies to be involved in the proposed process by the promoter during the pre-application engagement and possibly during the representation and examination phase. In terms of statutory bodies, it is likely that SNH and SEPA in addition to Historic Scotland (as part of the Scottish Administration) will be most called-upon in relation to the promoter’s Environmental Impact Assessment (EIA). Having consulted with SNH and SEPA, the Scottish Executive expects the financial impact on them to be broadly neutral. SNH commented that there is an expectation that the new process will reduce the amount of work over the lifespan of a project. Historic Scotland costs are dealt with under Scottish Administration costs (see paragraph 111).

128. The Scottish Executive will also be prescribing other bodies (set out in secondary legislation) who must be consulted by the promoter according to the type of application. These bodies could include the British Waterways Board, the Office of the Rail Regulator, the Inland Waterways Amenity Advisory Council and voluntary/membership-based bodies. These bodies may also wish to participate in the representation period and possibly at any examination.

129. Although the promoter must consult with these bodies according to the nature of their application, the extent to which these bodies engage with the promoter can be largely
determined by their own internal priorities and resources. Therefore whilst the Scottish Executive appreciates the limited resources of these organisations, particularly voluntary/membership-based bodies, because of their specific function, the Scottish Executive does not expect their input to be required on a regular or frequent basis and therefore does not expect significant demands to be placed upon them in terms of engaging with promoters. The Scottish Executive does not therefore expect there to be a significant financial impact on SNH, SEPA, or any other bodies.

IMPACT ON LOCAL AUTHORITIES/NATIONAL PARKS AUTHORITY

Summary

- The impact on local authorities and National Parks authorities will not be significant.

Detail

130. The promoter will be required to engage with the relevant local authority and/or National Park authority early in the process and well before the application is submitted. As is the case in consulting with other bodies, the level of engagement on the part of the local authority or National Parks authority will be determined by internal priorities and resources. However, we would not expect the number and frequency of these applications to have more than a minor impact on local authorities or National Park authorities and therefore the Scottish Executive does not expect there to be a significant financial impact on these authorities.

131. As part of the intention to create an efficient process, one of the proposals in the bill is that relevant consents, permissions or licenses for an application are considered as part of the examination process rather than through separate regimes as set out in other legislation. This aims to achieve a one-stop-shop approach. This may have a limited impact on local authorities and/or National Park authorities (where these powers exist) in that some consents required as part of a transport application may otherwise have been assessed by them. The Bill’s proposals should therefore constitute a small saving on resources in this area but the Scottish Executive does not expect this to be a significant impact.

IMPACT ON THE PUBLIC

Summary

- The impact on the public will not be significant.

Detail

132. Similar to the role of other bodies, local authorities and National Park authorities above, members of the public may become engaged with the process at the consultation, representation and examination stage. It is not possible to estimate the financial implications for members of the public other than to state that these will be borne through the time taken for an individual to participate in the process and possibly by hiring legal representation. However, the Scottish Executive expects the Bill to provide the public with meaningful opportunities to influence the design and development of the project. Although the decision to pay for legal representation is
These documents relate to the Transport and Works (Scotland) Bill (SP Bill 66) as introduced in the Scottish Parliament on 26 June 2006

entirely voluntary, the Scottish Executive expects that changes to the examination process will help reduce the inclination to acquire legal representation.

133. We are proposing a small financial saving to the public in that we are removing the £20 objection fee which currently exists for the Private Bills process, for which there will be consequential minor administrative cost benefits.

PART 3: SPECIAL PARLIAMENTARY PROCEDURE (SCHEDULE 3 INTRODUCED BY SECTION 28(2))

Summary

- There will be a saving to the Scottish Parliament of £4.5K for each use of SPP.
- There will be a cost to the Scottish Executive of £2.9K for each use of the new procedure.

Detail

134. The Scottish Executive is including provisions in the Bill to remove the requirement for SPP for transport projects. It is very difficult to estimate the financial implications of this proposal as the Scottish Executive is unaware of any recent use of SPP on which to form a judgement about the resulting costs. Since the only change in the process is for the Scottish Ministers to make a determination following an inquiry, as opposed to a Scottish Parliament Committee, under the current legislative framework, the financial implications are relatively insignificant. The Scottish Executive estimates that there may be a saving to the Scottish Parliament of £4.5K\(^{27}\). The costs to the Scottish Executive would rise slightly in respect of a consideration of the inquiry report. This would mean that an additional cost of £2.9K\(^{28}\).

---

27 These estimated costs are based on the existing SPP procedure taking 1 month rather than the 19 months of an average Private Bill informed by discussions with the Private Bills Unit. The staff costs have therefore been calculated based on the staff costs associated with the Transport and Works provisions but at a ratio of 19:1.
28 Cost based on estimates associated with reviewing an examination report under the Transport and Works Bill proposals.
### ANNEX A

**TABLE COMPARING COSTS ASSOCIATED WITH THE PRIVATE BILLS PROCESS AND THE TRANSPORT AND WORKS (SCOTLAND) BILL PROPOSALS**

<table>
<thead>
<tr>
<th>Private Bills activity</th>
<th>Costs (£K)</th>
<th>Stage in Process</th>
<th>Costs (£K)</th>
<th>Transport and Works (Scotland) Bill activity</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consultation, design, research, paperwork, publicity.</td>
<td>6000</td>
<td>Pre-application consultation and engagement</td>
<td>7000</td>
<td>Consultation, engagement, design and development, surveys, research, administration, publicity.</td>
</tr>
<tr>
<td><strong>Differences:</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>Differences:</strong></td>
</tr>
<tr>
<td>Promoter identifies affected persons</td>
<td></td>
<td></td>
<td></td>
<td>Specified statutory consultees</td>
</tr>
<tr>
<td>No evidence of engagement required</td>
<td></td>
<td></td>
<td></td>
<td>Evidence of engagement</td>
</tr>
<tr>
<td>No power to enter land to conduct surveys</td>
<td></td>
<td></td>
<td></td>
<td>Power to enter land to conduct surveys</td>
</tr>
<tr>
<td>Environmental statement only</td>
<td></td>
<td></td>
<td></td>
<td>Environmental Impact Assessment (EIA)</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Code of construction</td>
</tr>
<tr>
<td>Scottish Parliament officials’ guidance and advice to promoter.</td>
<td>8.3</td>
<td></td>
<td></td>
<td>Scottish Executive officials’ guidance and advice to promoter.</td>
</tr>
<tr>
<td><strong>Differences:</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>Differences:</strong></td>
</tr>
<tr>
<td>Advice focuses on timetabling for the Bill</td>
<td></td>
<td></td>
<td></td>
<td>Advice provided on systematic basis up to 1 year in advance of submitting application</td>
</tr>
<tr>
<td>Advice sought about 3 months in advance of Bill’s introduction</td>
<td></td>
<td></td>
<td></td>
<td>Pre-application scrutiny 42 days in advance of application</td>
</tr>
<tr>
<td>Publicity and preparation for objection period</td>
<td>26.2 (2.2)</td>
<td>Submitting application and preparing for representation</td>
<td>33.9 (0.9)</td>
<td>Publicity and preparation for representation period</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Of which Scottish Parliament staff costs</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Of which Scottish Executive staff costs</td>
</tr>
<tr>
<td>Private Bills activity</td>
<td>Stage in Process</td>
<td>Costs (£K)</td>
<td>Transport and Works (Scotland) Bill activity</td>
<td></td>
</tr>
<tr>
<td>--------------------------------------------------------------------------------------</td>
<td>------------------</td>
<td>------------</td>
<td>-------------------------------------------------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>Differences:</td>
<td></td>
<td></td>
<td>Differences: Adverts in Edinburgh Gazette, (Lloyds List) and a newspaper circulating in the area 2 weeks apart</td>
<td></td>
</tr>
<tr>
<td>Newspaper adverts in 2 newspapers circulating in the area affected 2 weeks apart</td>
<td>period</td>
<td></td>
<td>Obligation to place information on website</td>
<td></td>
</tr>
<tr>
<td>No requirement to place information on website</td>
<td></td>
<td></td>
<td>Public meetings take place during representation period (fewer staff resources at this stage)</td>
<td></td>
</tr>
<tr>
<td>Public meetings take place in advance of objection period (more staff resources at this stage)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Objection period and administration of representations</td>
<td>Representation period</td>
<td>9.3</td>
<td>Representation period and administration of representations</td>
<td></td>
</tr>
<tr>
<td>Differences:</td>
<td></td>
<td></td>
<td>Differences:</td>
<td></td>
</tr>
<tr>
<td>Public meetings completed in stage above</td>
<td></td>
<td></td>
<td>Public meetings (more staff resources)</td>
<td></td>
</tr>
<tr>
<td>Consideration undertaken by Private Bills Committee</td>
<td>Detailed consideration and review</td>
<td>65(^{31})</td>
<td>Consideration undertaken by independent reporter</td>
<td></td>
</tr>
<tr>
<td>Passing the Bill</td>
<td>Finalising the legislation</td>
<td>0(^{33})</td>
<td>Making the Order</td>
<td></td>
</tr>
<tr>
<td>Differences:</td>
<td></td>
<td></td>
<td>Differences:</td>
<td></td>
</tr>
<tr>
<td>Limited official involvement</td>
<td></td>
<td></td>
<td>Staff costs involved in finalising the order</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>6108.8</td>
<td>7102.4</td>
<td></td>
</tr>
</tbody>
</table>

\(^{31}\) MSP time has been excluded.

\(^{32}\) Of which staff costs.

\(^{33}\) MSP time has been excluded.
EXECUTIVE STATEMENT ON LEGISLATIVE COMPETENCE

135. On 26 June 2006, the Minister for Transport (Tavish Scott MSP) made the following statement:

“In my view, the provisions of the Transport and Works (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”

---------------------

PRESIDING OFFICER’S STATEMENT ON LEGISLATIVE COMPETENCE

136. On 22 June 2006, the Presiding Officer (Right Honourable George Reid MSP) made the following statement:

“In my view, the provisions of the Transport and Works (Scotland) Bill would be within the legislative competence of the Scottish Parliament.”
These documents relate to the Transport and Works (Scotland) Bill (SP Bill 66) as introduced in the Scottish Parliament on 26 June 2006.

TRANSPORT AND WORKS (SCOTLAND) BILL

EXPLANATORY NOTES

(AND OTHER ACCOMPANYING DOCUMENTS)


Applications for reproduction should be made in writing to the Licensing Division, Her Majesty’s Stationery Office, St Clements House, 2-16 Colegate, Norwich NR3 1BQ Fax 01603 723000, which is administering the copyright on behalf of the Scottish Parliamentary Corporate Body.

Produced and published in Scotland on behalf of the Scottish Parliamentary Corporate Body by Astron.