TRANSPORT AND WORKS (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. This document relates to the Transport and Works (Scotland) Bill introduced in the Scottish Parliament on 26 June 2006. 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 66–EN.

THE BILL

2. The Bill seeks to achieve the Scottish Ministers’ commitment of 4 May 2005 to the Scottish Parliament to place the Scottish Ministers at the heart of a modern, efficient order-making process and thereby replace the need for Private Bills for transport-related developments. Additionally, it makes modifications to legislation authorising road and harbour developments so as to ensure consistency across all order-making processes for transport developments. The Bill also introduces provisions to replace special Parliamentary procedure for the determination of unresolved objections in respect of transport-related developments and instead, aligning with the broad thrust of operating efficient proportionate processes, makes the Scottish Ministers, rather than the Scottish Parliament, the appropriate decision-making body. New procedures for the making of pilotage orders are also proposed as is a minor change to extend the power of the Scottish Ministers to make grants and loans for the purchase, in certain circumstances, of properties in consequence of a transport development.

POLICY OBJECTIVES OF THE BILL

3. The primary policy of the Bill is to provide a modern efficient process to authorise transport-related developments which has the confidence of promoters and those directly affected by proposed developments as well as the wider public. The process is to be open and transparent within a context that encourages public engagement and participation; ensures that there are appropriate and consistent communication channels for the provision of pertinent information; seeks to be cost and time efficient; enables a public examination of development proposals to be conducted by an independent person appointed on the basis of their qualifications and experience; ensures that decisions are well-founded, informed by evidence and publicly explained; confirms that all developments are approved as being in the public interest; and, complies with the letter and the spirit of all relevant environmental legislation.
4. The policy is not for the new order-making power to apply to all transport developments as the Scottish Ministers consider the existing order-making powers for certain developments (particularly roads and harbour developments) to be adequate and consistent with the Bill’s proposals. However, the intention is that those developments (road and harbour developments) that are covered by existing order-making powers will be subject to similar levels of scrutiny and approval thus ensuring that there is conformity of approach in all transport developments.

5. A secondary, associated policy is to ensure that a proportionate process applies for the determination of unresolved objections by certain specified statutory bodies (e.g. harbour authorities, roads authorities, Scottish Water) to development proposals of another statutory body. The intention is to replace the requirement to invoke special Parliamentary procedure in certain specified instances and enable instead the Scottish Ministers, rather than the Scottish Parliament, to rule in favour of one or other of the parties in conflict, subject to a public examination of the matter under dispute.

6. The contents of the Bill are summarised below:
   - Sections 1-22 make provision to enable the Scottish Ministers, under order-making powers, to authorise transport developments and provide details of the procedure for the making of orders.
   - Sections 23, 24 and 25 provide for modifications to legislation relating to road and harbour developments so as to ensure a greater level of conformity in the authorisation process for transport-related developments, improve the communication of information to interested parties and the wider public and establish revised procedures for the making of pilotage orders.
   - Section 26 makes provision to enable the Scottish Ministers to provide funds in respect of a transport development to enable the acquisition of certain property under a voluntary purchase scheme.
   - Sections 27, 28 and 29 contain details on such matters as procedure for subordinate legislation under the Bill as well as provisions for modification or repeal of other enactments (particularly those relating to special Parliamentary procedure) as a necessary consequence of the provisions of the Bill.

Background

Transport authorisation

7. At present transport developments involving the creation and operation, for instance, of a new railway or tramway are authorised under a Private Bill in the Scottish Parliament. The Private Bill procedures are set out in the standing orders of the Scottish Parliament. In terms of the standing orders a “Private Bill is a Bill introduced for the purpose of obtaining for an individual person, body corporate or unincorporated association of persons (“the promoter”) particular powers or benefits in excess of or in conflict with the general law, and includes a Bill
relating to the estate, property, status or style or otherwise relating to the personal affairs, of the promoter”¹.

8. The Private Legislation Procedure (Scotland) Act 1936 also remains in force. That provides a procedure for progressing private legislation in Scotland in the UK Parliament by way of a provisional order by the Secretary of State. Notwithstanding devolution, that procedure remains available, however, the procedure “shall not apply where any public authority or any persons desire to obtain Parliamentary powers the conferring of which is wholly within the legislative competence of the Scottish Parliament”².

9. Accordingly the procedure under the 1936 Act remains available where the provision proposed is either:
   - fully outwith the legislative competence of the Scottish Parliament; or
   - is a mix of Scottish provision, some of which is within and some of which is outwith, the legislative competence of the Scottish Parliament.

10. In June 2004 the Procedures Committee of the Scottish Parliament conducted an inquiry into the practice and procedures of the system for handling Private Bills. After consulting a range of parties the Committee reported its findings to the Scottish Parliament in May 2005³. The report recommended, in the short term, improvements to the existing process and procedures and, in the longer term, a new statutory system that would place the principal responsibility for handling applications and decision-making with the Scottish Ministers. The report also recommended that the Scottish Ministers should prepare and introduce a Bill before the end of the current Scottish Parliamentary session to enable the new procedures to operate in the next Parliamentary session.

11. On 4 May 2005 the Scottish Parliament approved the Procedures Committee’s recommendations and the First Minister subsequently in the legislative statement⁴ to the Scottish Parliament confirmed that the Scottish Ministers would be bringing forward a Bill to address the matter.

Special Parliamentary procedure

12. Prior to devolution the requirements of special Parliamentary procedure (SPP) were laid down, in relation to orders applying exclusively to Scotland, by section 10 of the Statutory Orders (Special Procedure) Act 1945. SPP only applies in a limited number of specific instances, most usually where one statutory body has an unresolved objection to the proposal of another statutory body (e.g. a harbour authority objects to the construction of a road within its harbour area by a roads authority).

² Reference: Section 1(5) of the 1936 Act (as amended by paragraph 5 of Schedule 8 to the Scotland Act 1998).
³ http://www.scottish.parliament.uk/business/committees/procedures/reports-05/prr05-04-vol01-00.htm
⁴ http://www.scottish.parliament.uk/business/officialReports/meetingsParliament/or-05/sor0906-02.htm#Col18782
13. Following devolution the power to make, confirm or approve an order subject to SPP conferred by a pre-devolution enactment has been transferred to the Scottish Ministers\(^5\) so far as exercisable within devolved competence. The Scotland Act 1998\(^6\) provides that such orders (special procedure orders) should be subject to such special procedure as may be provided by the Scottish Parliament. The Scottish Parliament has not enacted relevant provisions but transitional procedures are laid out in the Scotland Act 1998 (Transitory and Transitional Provisions) (Orders subject to Special Parliamentary Procedure) Order 1999\(^7\).

14. Broadly, before a special procedure order is made or confirmed by the Scottish Ministers there must be compliance with the legislative requirements in respect of publicity and the giving of notice of the proposals and the period for raising objections. The notices are published by the applicant for the order, or by the Scottish Ministers if they are promoting the special procedure order, and must specify the time period for objections and the manner in which they may be made.

15. If there are no objections (or only objections that are frivolous or relate to compensation), the Scottish Ministers may lay the order before the Scottish Parliament. It is then subject to annulment by a resolution of the Scottish Parliament passed within 40 days of the date on which it is laid. If it is not annulled within that period, it will come into force immediately on the expiry of the 40 days or at any later date as specified in the order.

16. Where a valid objection is made and not withdrawn (i.e. it remains unresolved) the order cannot be made unless it is confirmed with or without amendment by an Act of the Scottish Parliament. The appropriate Confirmation Bill, as per special Parliamentary procedure, must set out the proposed order and may be introduced either by the applicant or the Scottish Ministers. Following introduction the Confirmation Bill is treated as a Private Bill for the purposes of the appropriate standing orders of the Scottish Parliament.

17. In September 2000 the Private Bill working group established by the Scottish Parliament Procedures Committee reported. In respect of SPP it stated:

\[\text{“that the [Procedures] committee notes the procedures set out in section 8 [of the report] for the processing of orders subject to special Parliamentary procedure and that consideration is given to putting the whole area of SPP on a new statutory footing.”}\]

18. In November 2005 Parliamentary clerks approached the Scottish Executive and asked that consideration be given, as part of the Executive’s proposals to modernise the Private Bills process, to reviewing the process associated with special Parliamentary procedure.

**Modifications to roads and harbour legislation**

19. Under the current legislative framework the Scottish Ministers make an order or scheme in respect of a trunk road\(^8\) or harbour development\(^9\) without reference to the Scottish Parliament.

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\(6\) Section 94, Scotland Act 1998.

\(7\) (SI 1999/1593)
20. In the light of the challenges made in respect of the order authorising the extension to the M74 motorway the Scottish Ministers propose that roads developments of such national significance and interest should, in addition to public examination by means of an inquiry, be subject to the scrutiny and approval of the Scottish Parliament.

21. The Scottish Ministers also believe, for reasons primarily of consistency, that nationally significant harbour developments should similarly be subject to the scrutiny and approval of the Scottish Parliament.

Consultation and research

Guided transport systems

22. The Bill has been informed by the Procedures Committee’s report\(^{11}\), subsequent and extensive consultations and discussions with stakeholders and interested parties, as well as an investigation into the processes adopted by other jurisdictions in authorising transport developments.

23. During December 2005 through to early March 2006 the Scottish Executive conducted detailed discussions with a broad range of stakeholders in order to inform and refine its proposals. As well as consulting Parliamentary officials (represented by clerks to the Procedures Committee, Local Government and Transport Committee and the Private Bills Unit), discussions were held with business interests (Confederation of British Industry, Scottish Council for Development and Industry), environmental concerns (Scottish Environment Protection Agency, Scottish Natural Heritage, Historic Scotland, Scottish Environment Link), other public bodies (Convention of Scottish Local Authorities, Regional Transport Partnerships), the Society of Parliamentary Agents and a number of legal firms that provide support to the promoters of large transport schemes.

24. An opportunity was also taken over that period to discuss particular matters with officials within the UK Department for Transport, the Eddington review team\(^{12}\), and the Irish and Canadian Governments.

25. Detailed discussions were conducted with the Transport and Works Unit, Department for Transport, on the practical application of the provisions of the Transport and Works Act 1992, as it applies to England and Wales and an analysis was undertaken of the suggested improvements as promoted within the report *Review of system for making orders under part 1 of the Transport and Works Act 1992*\(^{13}\).

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\(^{8}\) http://www.scottish.parliament.uk/business/committees/historic/procedures/papers-00/prp00-09.pdf

\(^{9}\) Roads (Scotland) Act 1984

\(^{10}\) Harbours Act 1964

\(^{11}\) http://www.scottish.parliament.uk/business/committees/procedures/reports-05/prr05-04-vol01-00.htm

\(^{12}\) Led by Sir Rod Eddington and commissioned by the Treasury and the Department for Transport the review team are to “advise on the long-term impact of transport decisions on the UK’s productivity, stability and growth”.

\(^{13}\) MVA, with associated consultants CVRL, Adams Hendry and Rees and Freres, were appointed by the then Department of Transport, Local Government and the Regions (DTLR) to undertake a Review of the Transport and Works Act, 1992. The main
26. The Scottish Executive additionally commissioned a review of policies and procedures in national and sub-national jurisdictions. That review culminated in the report *The provision of Transport & Works Bill: review of processes and procedures in other countries*.

27. In February 2006 the Scottish Executive published its consultation paper *Proposals for a new approach to delivering public transport infrastructure developments* which invited comment on the Procedures Committee’s proposals, and in particular, sought views on the extent and role of the Scottish Parliament in any proposed project authorisation procedure. A review of the consultation responses has been published.

28. A series of workshops involving interested stakeholders were held during May to inform and confirm the practical application of the Scottish Executive’s proposals.

**Issues arising from consultation on transport developments**

29. Overall, the response to the consultation was very positive. Many of the respondents commented on the lengthy and burdensome nature of the Private Bills process and welcomed proposals to introduce a more efficient, streamlined system.

30. All of the comments related to specific proposals, not to the intention behind the Bill. These comments will be considered in the context of the specific provision in the Bill. Particular attention was given to the granting of access to land and how a certificate of fitness for a promoter wishing to gain access to land would operate in practice, the length of the representation period and the level of Scottish Parliament scrutiny.

**Special Parliamentary procedures**

31. As part of the broad policy to modernise the authorisation of developments the Scottish Executive published its proposal to remove the requirement for special Parliamentary procedures in Acts relating to transport interests, for consultation, in March 2006 in *Transport legislation – review of special Parliamentary procedure provisions*.

32. As well as consulting Parliamentary officials (represented by clerks to the Procedures Committee and the Private Bills Unit) discussions were held with the National Trust for Scotland who have a particular interest in that the compulsory purchase of land held inalienably by the Trust is subject to special Parliamentary procedure if the Trust has an unresolved objection to the compulsory acquisition.

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14 http://www.Scotland.gov.uk/Publications/2006/03/Transport
15 http://www.scotland.gov.uk/Topics/Transport/legislation/NewApproach/Analysis
16 http://www.scotland.gov.uk/Publications/2006/03/SPP
17 The National Trust for Scotland Order Confirmation Act 1935 provides power to declare land inalienable. Though the Act does not provide any definition of inalienable it can be defined as being “not to be removed or transferred to another”.

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Issues arising from consultation on special Parliamentary procedures

33. The consultation confirmed broad support for the proposals. A report of the consultation exercise has been published.\(^{18}\) Whilst there was overwhelming support for the proposals, comments received included the need for the Scottish Ministers under the new process to make any decisions expeditiously, for the report of any inquiry to be taken fully into account before reaching a decision and for Parliamentary scrutiny to occur in those instances where the Scottish Ministers might disagree with an inquiry reporter’s recommendation. A view was also expressed that the very nature of SPP (i.e. the need to produce a Confirmation Bill and its associated costs, in time and money) provided an encouragement to parties to attempt to seek resolution and therefore any change to a simplified system might generate more unresolved objections.

DETAILED POLICY PROVISIONS OF THE BILL

Part 1: Orders authorising works etc.

34. The policy intentions are broadly similar to those that apply in England and Wales and therefore inevitably there is a degree of similarity in the provisions of this Bill with those contained within the Transport and Works Act 1992. Indeed the review of the Private Bills process of the Procedures Committee presaged this outcome. However, there are some significant policy differences, to those that prevail in England and Wales, which are summarised below.

35. The policy differences are:

- That the Scottish Parliament is to be involved actively in the consideration of orders that relate to nationally significant developments so as to ensure that the authorisation of the development occurs at a level appropriate to the scope and impact of the development;

- That greater emphasis is to be made to ensure that there is a higher level of participative democracy prior to the making of an application for an order, encouraging constructive and meaningful dialogue between parties in the initial design development process so as to engender a culture of participation rather than one which is adversary;

- That the information provided in support of an application for an order is appropriate, complete and has been subject to pre-application scrutiny so as to reduce instances of future potential process delay through the need to clarify or obtain information;

- That there is greater flexibility of the examination of evidence so as to provide a less intimidating environment for all participants with a greater emphasis on informal proceedings (in line with the Planning Bill\(^{19}\) proposals);

- That the process operates more efficiently by, for instance, enabling promoters to enter land for survey work in advance of an order so as to more clearly define the proposed route;

- That the Scottish Ministers actively promote transport developments.

\(^{18}\) http://www.scotland.gov.uk/Topics/Transport/legislation/SPP/Analysis

\(^{19}\) Planning etc. (Scotland) Bill
Overview of proposed process

36. The proposed process, which will be provided for largely in secondary legislation, distinguishes between those developments that are nationally significant and those which are not. The policy intention is that the Scottish Parliament’s interest should be proportionate and focus on those developments that are of national strategic interest.

37. In process terms nationally significant developments will be subject to express Parliamentary scrutiny and approval whereas non-national developments will be approved without reference to the Scottish Parliament.

38. A nationally significant development will be described and defined within the National Planning Framework (NPF), and the Scottish Parliament, as part of its review of the NPF, will have an opportunity to debate the merits and principle of the development at an early stage. The intention is that all nationally significant transport developments should be subject to the express approval of the Scottish Parliament, therefore the orders will be subject to affirmative procedures.

39. Other lesser developments will be subject to the same public process of scrutiny, as described below, as the nationally significant developments but will be normally exempt from express approval by the Scottish Parliament. It will be possible for the Scottish Ministers to subject, if they so wish, any order to affirmative procedures and they may wish, for example, to subject a novel guided transport system to affirmative procedure for reasons of public interest, even if the development itself is not of national significance.

Pre-application activity

40. It is important that transport decisions are well-founded, appropriately appraised, informed by other policy and development priorities, subject to participative democratic scrutiny and take due account of environmental considerations and the concept of sustainable development and intergenerational equity. Most transport initiatives are likely to arise as a means of realising the objectives within the national transport strategy, regional transport strategies, local transport strategies, the National Planning Framework or strategic and local development plans.

41. Powerful appraisal and modelling tools ensure that transport choices are fully informed by policy development priorities and a thorough understanding of the problems. Scottish Transport Appraisal Guidance (STAG) plays a crucial role in making certain that public resources are used wisely and effectively and that a range of solutions can be provided to the investment decision maker. The appraisal process is also supported by modelling tools which

20 “Intergenerational equity means that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations”. Australian Natural Heritage Charter, 1996.
21 STAG is an objective-led process. It ensures consistency of approach to transport appraisal and enables investment decisions to be made on an objective basis.
22 The Transport Model for Scotland (TMfS) is an example of an applied modelling tool. It simulates travel movements to enable the impact of transport changes to be analysed and assessed and includes a transport/economic/land use model of Scotland which takes account of planning policies and household and business behaviours to provide input to the overall TMfS and to assess the likely changes in land use consequent on changes in transport patterns.
can assist in the analysis of complex information and provide an assessment of the future impacts of various transport proposals.

42. It is the intention that a promoter should be able to obtain access to inspect and survey land during the STAG appraisal process so as to identify more clearly any necessary information on the proposed route of a transport proposal which could influence the decision flowing out of the STAG appraisal as well as being able to undertake the work necessary to inform an environmental assessment.

43. The promoter will be obliged subsequently to develop more detailed proposals and be required to serve notice on and engage with those whose land or interest in land is directly affected by the proposed development, for instance any person with an interest who potentially will be affected by compulsory purchase. The promoter will also be obliged to engage with those whose properties are adjacent to the proposed project, those engaged in the management of land adjacent to the project and with those parties that are specially affected, for example businesses, close but not adjacent to the proposed project whose manufacturing processes or business may be affected by the proposed development.

44. In addition to notifying all affected parties the promoter will be required to enter into meaningful engagement with the affected parties as well as statutory bodies, local MSPs and local community based organisations.

45. In respect of environmental concerns the promoter will be required to liaise with relevant bodies so as to obtain the information necessary to undertake an environmental impact assessment, in accordance with UK and European legislation, as well as being able to provide the Scottish Ministers with sufficient information to enable the Scottish Ministers to form an assessment as to whether the proposed work is of such over-riding public interest that it may impact land that is designated as a Special Area of Conservation, a Special Protection Area or a Ramsar site.

46. The intention is that the Scottish Ministers will be able to act as a promoter and the rules in respect of engagement and the publicity of information will apply to them as they apply to any other promoter. Indeed throughout the whole process the Scottish Ministers when acting as a promoter will be expected to follow rules similar to those that apply to other promoters.

**Pre-application scrutiny**

47. Once the promoter has collated all the information in support of their application they will be obliged, not later than six weeks before making the formal application, to subject their information to pre-application scrutiny by the Scottish Ministers.

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23 Special Areas of Conservation as designated under Directive 92/43/EEC, the Conservation of Natural Habitats and of Wild Flora and Fauna

24 Special Protection Areas as classified under Directive 79/409/EEC, the Conservation of Wild Birds.

25 RAMSAR Intergovernmental Treaty which provides the framework for national action and international co-operation for the conservation and wise-use of wetlands and their resources (It was signed in Ramsar, Iran in 1971).
48. The intention is to ensure that comments and queries on the provisions within the draft order and the environmental information are raised at an early stage. This scrutiny will be conducted without prejudice to consideration of the merits of the scheme and any eventual decision of the Scottish Ministers. As part of the scrutiny the environmental information will be issued for review to Scottish Natural Heritage, the Scottish Environment Protection Agency and Historic Scotland so that they may comment on the final draft proposals of the promoter. (These parties, though, will have been engaged with the promoter at a much earlier stage and will have been required to provide environmental information to the promoter).

Application

49. The efficiency of the process will, to a large extent, be conditioned by the standard of the information provided in support of the application. The policy objective, as has been mentioned previously, is to enable decisions to be made quickly; poor or inadequate documentation that requires clarification throughout the process will inevitably prolong the process due to ongoing uncertainties for promoters, supporters and objectors.

50. In addition to the draft order a promoter will be expected to provide:
   - an explanatory memorandum explaining the need and justification for, and intended practical effect of, the provisions in the draft order;
   - a concise memorandum setting out the aims and objectives of the proposed development including any alternative means or approaches considered and the reason for their rejection;
   - a concise factual account of the arrangements made and conducted in relation to the notification and presentation of the proposals and the level and extent of engagement with those directly affected by the proposals, the general public, community groups and statutory bodies;
   - an estimate of expense and a funding statement detailing the cost of the proposals and the likely sources of funding;
   - a code of construction practice;
   - a statement of legislative competence;
   - details of all consents (including planning permission) necessary to implement the proposals;
   - maps and plans of the proposed works; and
   - a comprehensive environmental statement.

Objection period

51. Once the promoter has made an application it will trigger a specified period of six weeks (42 days) within which individuals and organisations may make objection. The intention is that no fee will be levied for making an objection.

Consideration

52. During the objection period the Scottish Ministers will commence an assessment of the application to determine that the application complies with the defined procedural considerations (for example, the level and extent of the practical engagement with those parties that are likely to be directly affected by the proposals).
53. It is expected that the Scottish Ministers will provide public notice of the examination arrangements under the rules.

Examination

54. It is proposed that the process used to examine objections will be consistent with other Scottish Executive policies; the Scottish Ministers will therefore call for an examination to consider objections. This will be chaired by an Executive-appointed independent reporter. The examination will be held in public, and the process will itself be open and transparent. It will be organised to meet the Scottish Ministers’ objective of encouraging public participation. All parties will be expected to disclose their entire case in advance, allowing the examination to concentrate on the matters in dispute.

55. The reporter will have the necessary powers to call for evidence, or to require the agreement of statements of common ground and of disputed facts. The reporter may be assisted by technical experts, if considered necessary, to assist with technical matters at the examination. The hearings will be held, as far as practicable, at a place convenient to all parties and reasonably close to the location of the proposal. As far as possible inquiries will be held on sequential working days and where there are a large number of objections two or more reporters may be engaged so that matters can be addressed concurrently, where practical, and to speed the reporting process.

56. As has been discussed the Scottish Ministers require that promoters’ proposals are fully detailed and feasible at the point of submission in order to increase certainty and to reduce the difficulties faced by objectors when schemes are materially altered late in the day. The intention is that there should be no scope for any substantive amendment by the promoter once an application has been submitted; this is to ensure that the application is not continuously being changed. However, amendments designed to alleviate or remove any objections, implemented with the consent of both the promoter and the objector, will be encouraged by the reporter. The process used to consider objections will be determined by the Scottish Ministers. The method would thus be determined by the nature of the issues raised and the most effective means of resolving the outstanding issues. In any scheme this could involve an exchange of written submissions; informal proceeding where the reporter would lead a structured discussion following an agenda circulated in advance; a more formal inquiry process; with a discussion or inquiry informed by visits to the site by the reporter and any technical experts.

57. No matter what means of consideration is adopted in any individual case, the Scottish Ministers may direct the examination to consider a matter, or matters, on which they particularly wish to be informed for the purposes of their decision. Reporters will be expected to conduct the examination in a manner that ensures the absence of repetition or any concentration on matters irrelevant to the Scottish Ministers’ consideration of the scheme, however, ultimately the conduct of the examination will be a matter for reporters.

58. At the conclusion of the examination the reporter will provide the Scottish Ministers with a report containing conclusions and reasoned recommendations. If a reporter makes a recommendation that the order should be amended to include additional or modified works then evidence must be considered relating to those modifications including, where necessary, an
assessment of their environmental effects. It may also be necessary to notify parties who may be affected by the modifications and allow for a further period to make representations.

59. The length of an examination will depend very much on the scope and type of the development as well as the number of people affected.

**Determination**

60. On receipt of the reporter’s recommendations the Scottish Ministers will be required to make a decision, either to accept (with or without modifications) or to reject those recommendations. The Scottish Ministers will be expected to make a decision within 12 weeks of receipt of the reporter’s report or 12 weeks after any subsequent request for additional information. The authorisation process from application to the making of an order should not take longer than the existing Private Bill process and indeed there is every expectation that the time frame will be shorter since much more activity is to occur prior to the application.

61. The material available to the Scottish Ministers, in formulating a decision, will include the application and its supporting documentation, relevant objections made on the proposal, the transcript of the oral examination, any further evidence supplied at the examination or as a written submission together with the reporter’s recommendations. In addition, the Scottish Ministers will, in forming a decision concerning the project, be able to request information or advice that might assist their consideration. Any such material will be made available to other parties to the process.

62. If the Scottish Ministers propose to make any modification to the order, which will make a substantial change in the proposals, then the Scottish Ministers will notify all affected persons including those newly affected and be placed under a duty to consider any representations that they make. Depending on the nature of the modification proposed this process of further information might be best organised by re-opening the examination. The means of collecting the additional information will be tailored to the issues to be resolved.

63. The Scottish Ministers must make public their decision and their reasons for it together with a notice containing a description of the main measures to be taken to avoid, reduce and, if possible, remedy major adverse environmental effects.

64. If the Scottish Ministers decide to authorise the development they will make the order, with or without modifications. In respect of a nationally significant project the order will be subject to Parliamentary approval. For a non-national development the order will normally be made without reference to Parliament though the Scottish Ministers will have the discretion to apply an affirmative procedure to it if, for whatever reason, they so wish.

**Parliamentary process**

65. As mentioned the final order for a nationally significant project will be laid before the Scottish Parliament and subject to affirmative procedure.
Discussion of ministerial authorisation

Policy objective

66. At present, as has been discussed, certain transport developments, such as a railway are authorised by means of an involved private Bill process whereas others such as a roads project are subject to a straightforward order-making process by the Scottish Ministers. The policy intention is to provide an order-making power, similar to that which the Scottish Ministers currently exercise in respect of the authorisation of trunk roads. This approach provides for a more straightforward efficient process and ensures conformity in the manner of the consideration and authorisation of those transport developments.

Alternative approaches

67. The Scottish Executive reviewed four possible options for the authorisation of developments:

- Scottish Parliamentary authorisation
- Authorisation through the planning regime
- Authorisation by a quasi-autonomous non-governmental organisation (Quango)
- Scottish ministerial authorisation

68. The first option was deemed to be inappropriate since the Scottish Parliament had clearly stated its will in May 2005 not to proceed with a Private Bill process, therefore any proposal that seeks to retain (or indeed extend) the current level of Parliamentary engagement is likely to be met unfavourably by all parties (Parliamentarians, promoters and those affected by developments).

69. The second option, which was superficially appealing, was to place authorisation for developments with the local planning authority within whose area a development is proposed. Indeed, as part of its evidence-gathering to inform its report the Procedures Committee heard witness statements that suggested delegating powers to planning authorities should be considered[26]. Similar promotions were voiced in the Parliamentary debate on 4 May 2005 where it was suggested that transport developments should be considered in a similar manner to other planning proposals.

70. After considerable deliberation it was decided that it would be inappropriate to delegate authority to local planning authorities. There were two principal reasons, which gave rise to the rejection of the proposal.

71. Firstly, transport developments are of a linear nature and are likely to affect more than one planning authority and therefore potential issues of co-ordination of activities might arise.

72. Secondly, transport developments are not frequent indeed since devolution the total number of developments which the Scottish Parliament has approved, or is currently assessing is

[26] http://www.scottish.parliament.uk/business/committees/procedures/reports-05/prr05-04-vol01-00.htm#f

submission by Councillor Laurence Marshall, City of Edinburgh Council.
only seven\(^{27}\). The necessary ability to process such applications is based on a concentration of expertise reinforced by practical experience. By providing an opportunity that disperses expertise and applies it in particular locations infrequently there is a probability of placing at risk the successful delivery of transport developments.

73. Consideration was also given to enable the planning authority to make a determination under delegated authority in a specified circumstance i.e. where the proposal relates to a development on the promoter’s own land and which has neither compulsory purchase or private/public rights implications; such an instance would however require the provisions within the Bill to be drafted in such a manner so as to circumscribe delegation to local planning authorities in particular specified circumstances. On reflection, however, such instances are likely to be rare and there may, picking up on the point identified earlier, be a lack of expertise within the planning authority to give effect to such a proposal. The Scottish Ministers are also concerned in having separate procedures for different classes of developments: greater security and understanding is generally obtained by conformity of approach.

74. The third approach considered was the creation of an independent body to whom promoters could make application for the necessary authorisation to enable a development to proceed. In short, the approach would remove from consideration, aside from the setting of the general policy, any Parliamentary or Ministerial engagement. Such an approach exists in Canada and New Zealand and perhaps more starkly with an Bord Plenala (the Planning Board) in Eire. Indeed, the Irish Government is promoting legislation within the Houses of the Oireachtas\(^{28}\) that seeks to further extend the current remit of the board beyond all major local authority developments and motorways so that it will take on responsibility for all major infrastructure developments (including strategic infrastructure consents, major electricity transmission lines and railway orders)\(^{29}\).

75. The Planning Board consists of members appointed by Irish Ministers as a result of nominations from professions, organisations, trades unions and environmental interests. The Irish Bill proposes that five members of the board, selected by the chairperson, shall now consider and determine any matter in relation to strategic infrastructure development.

76. Concerns of democratic accountability were raised in respect of a similar quango making determinations in Scotland of such strategic magnitude. The Scottish Ministers’ proposals for modernising the planning regime which are reflected in the Planning etc. (Scotland) Bill provide the context for how development is to proceed and within that are provisions which place primary responsibility for the determination of matters of strategic importance with the Scottish Ministers.

77. It is therefore for the reasons as explained above and the fact that the Scottish Ministers are accountable to the Scottish Parliament (and the courts) as well as the electorate that the Scottish Ministers have concluded that ministerial approval is the most appropriate means of

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\(^{27}\) Stirling-Alloa-Kincardine Railway; Waverley Railway; Edinburgh Tramways 1 and 2; Glasgow Airport Rail Link; Edinburgh Airport Rail Link; and Bathgate – Airdrie Railway.

\(^{28}\) Houses of Parliament, Ireland

This document relates to the Transport and Works (Scotland) Bill (SP Bill 66) as introduced in the Scottish Parliament on 26 June 2006

authorising developments, subject, in respect of nationally significant developments to ratification by the Scottish Parliament.

Consultation

78. There were no concerns expressed at the policy intention that Scottish Ministers should grant authorisation for public transport developments.

Section 1 – Orders as to transport systems and inland waterways

Policy intention

79. The policy intention is that the order should generally contain all necessary provisions to enable the construction and operation of the relevant transport system. It is also policy that all linear land based transport developments should for reasons of general conformity be subject to a Ministerial order procedure. That is currently the case for roads and will in future be the case for rail, tram and guided systems.

80. Under the devolution settlement it is only possible to authorise the promotion and construction of railways which start, end and remain in Scotland\(^{30}\). If a railway project goes cross-border then it would not be devolved and so cannot be promoted under the new powers in the Bill. That qualification would not arise for the other types of developments such as a tram or guided transport system where the Scottish Ministers would be able to authorise the Scottish works of any cross-border project.

81. It is also policy not to change the authorisation regime for port and harbour works, as these are well understood and have operated effectively over a number of years. Therefore, the new powers under the Bill are unavailable where the primary object would be achieved by reasons of an order under the Harbours Act 1964\(^{31}\).

Alternative approaches

82. Consideration was given to including the construction of motorways and major trunk road schemes and harbour developments within the scope of the Bill’s provisions. After due reflection it was concluded that the existing procedure under the Roads (Scotland) Act 1984 and Harbours Act 1964 had operated successfully. However, it was acknowledged that the creation of certain trunk roads and harbours is of such national significance that there ought to be an opportunity for the Scottish Parliament to provide the final approval. Therefore there are provisions, later in the Bill, that will ensure conformity of the approval process for all linear land based transport developments and harbour developments.

Consultation

83. The consultation paper\(^ {32}\) specifically raised questions on the Bill’s scope, to which a number of stakeholders responded\(^ {33}\). Most respondents sought the greatest level of consistency

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\(^{31}\) The Harbours Act 1964, particularly sections 14 and 16, provide powers amongst others to improve and construct harbours.

\(^{32}\) http://www.scotland.gov.uk/Publications/2006/02/23161534/0
possible and some suggested that airports should be included in the Bill’s scope, even though they are currently dealt with under planning legislation. However, airport developments have deliberately been excluded from the Bill because the development is usually within the curtilage of the airport and, unlike road and rail developments, is a fixed-point structure. It is therefore appropriate that airports are covered by planning legislation.

84. As indicated above, the consultation paper questioned whether trunk road and harbour developments should be included within the Bill’s proposals. In relation to trunk roads, there appeared to be a clear consensus that they should be incorporated into the new process. Respondents from the harbour industry were divided on whether nationally-significant harbour developments should be subject to Parliamentary scrutiny. The Bill reflects one step in a phased change by altering the existing roads and harbours legislation to enable nationally-significant trunk roads and harbour developments to be subject to Parliamentary scrutiny but retaining the existing order-making and scheme-making regime. There may be arguments to seek further conformity in the future but, given the complexity surrounding the road and harbour legislative systems, the Bill creates a level of conformity that is appropriate at this stage.

85. Some respondents raised concerns about the coverage of the Bill in relation to scope, including provision for changes in transport technology and other transport systems such as maglev and funicular railways. These and other transport systems have been reflected in the Bill’s drafting and are incorporated within the Bill’s scope.

Section 2 – Subject-matter of orders under section 1

Policy intention

86. The policy intention is to enable the promoter to obtain an order that provides the authority necessary to give effect to the proposed development. In broad terms, the promoter would be able to acquire land compulsorily, seek the extinguishment of public rights of way, construct the works, charge fares for the operation of the system once built as well as being able to transfer or lease the system to another body. In short, generally all that is required to build and operate a transport system such as a railway. These permissions are similar to those that can apply under the current private Bills process.

87. For reasons of process efficiency it is policy that the order-making power of the Scottish Ministers must be available to cover in a single order more than one scheme, system or mode of transport. This is because there may be instances where a particular transport system requires work at a number of locations. Rail, tramways, canals and other systems are linear developments, however the work required may need to take place at a number of locations in order for, for example, the creation of a system. It would be inefficient for a number of smaller improvements to need to be subject to separate applications and orders. The intention therefore is that a single order can authorise works to take place at more than one location.

Alternative approaches

88. No alternative approach was considered.

33 http://www.scotland.gov.uk/Topics/Transport/legislation/NewApproach/Analysis
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Consultation

89. No respondents commented on this issue.

Section 3 – Crown land

Policy intentions

90. The policy is to provide a mechanism for the appropriate Crown authority to consent to a right (not itself being a Crown right) subsisting in Crown land being affected by a proposal of acquisition or for another provision of the Bill or an order made under the provisions of the Bill to apply in relation to a Crown interest.

Alternative approaches

91. No alternatives were considered. It is not possible to acquire Crown land compulsorily, it must always be by agreement.

Consultation

92. No views were solicited.

Section 4 – Applications

Policy intentions

93. The policy intentions are twofold:

- to encourage and ensure meaningful public participation in order to assess the impact of the development and improve the confidence in and effectiveness of the process;
- to assure the quality and relevance of the information provided in support of the application so as ensure the efficiency of the subsequent process stages of examination, consideration, determination and authorisation in an open and transparent manner that has the confidence of all those involved.

Public participation

94. Obtaining the views of people and organisations likely to be affected by a development is an essential ingredient to any project appraisal. Their involvement aims to ensure both fairness in decision-making and to permit sources of information and perspective which may have been overlooked. Public participation is not only good practice it is, in respect of environmental decision-making, a requirement as a consequence of the Aarhus convention 199834 and the Public Participation Directive 2003/35/EC.

95. The benefit of public participation is that local issues can be taken into account. The Scottish Ministers want to ensure the provision of a reasonable timeframe for participation, which utilises appropriate methods of engagement and ensures that due account is taken of participation in the decision-making process. The Scottish Ministers are keen that there is much

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more public engagement through meaningful participation and involvement so as to increase acceptability of proposals and change perceptions of approval processes that are understood as mere technical exercises. The approach, as outlined above, is consistent with the proposed statutory requirements for pre-application consultation that are proposed within the planning white paper\(^{35}\) and included within the Planning etc. (Scotland) Bill. Public participation will permit proper, considered identification and assessment of the impacts, particularly on the natural and built heritage.

96. To be effective the proposals must not be viewed, as stated, as merely a technical process: acceptability and implementation depend on a transparent public debate on the wider economic and social benefits, as well as environmental side-effects. To that end the Scottish Ministers are keen to ensure that promoters engage with local non-statutory organisations (such as for instance membership-based charities or community groups), the general public and statutory bodies so that there is the widest possible engagement and participation in the considerations to inform the application.

**Quality and relevance of the information**

97. Once engagement activities have concluded the policy intention is that all relevant information, in support of an application, must be available at the time of the application. To realise that objective promoters will be provided with clear guidance on the type of information required and prior to making the formal application the information will be subject to a formal pre-application scrutiny. This approach if executed properly should enable any subsequent examination of the development to concentrate on the basis of shared agreed information on the impact on the chosen location and the environmental impact.

**Alternative approaches**

98. There is no alternative approach; public participation is not only required under EC legislation it is also good practice.

**Consultation**

99. A number of comments were received in relation to different aspects of the application process. The consultation paper specifically asked a question about the minimum length of time within which a promoter should conduct a consultation on proposals before presenting an application to the Scottish Ministers\(^{36}\). While most respondents indicated they were content with a 6-month period, some questioned whether there was a need for a statutory minimum period of consultation given the other mandatory requirements (such as evidence of effective consultation and pre-application scrutiny by the Scottish Environment Protection Agency, Scottish Natural Heritage and Historic Scotland) which the promoter must satisfy.

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\(^{35}\) Modernising the Planning System: Scottish Executive June 2005

\(^{36}\) Q2 of the consultation paper: What reasons exist for lengthening or indeed shortening the 6 month minimum designated statutory pre-application period between the promoter publicising initial proposals and presenting an application for an Order to the Scottish Ministers?
100. On further consideration, it was determined that an imposition of a minimum time period for consultation on promoters would be too restrictive, given that effective consultation may not be achieved within a fixed time, as it will be subject to other factors including the size of the proposed development, how many people are affected and the effectiveness of the promoter. The intention is therefore not to impose a minimum time period within which a promoter must conduct a consultation.

101. Other comments focused on suggestions for additional information to be included with an application. The detail of the application information set will be specified in secondary legislation and will be consulted on separately. The comments from the consultation will inform that consideration.

Section 5 – Cases where other Member States are affected

Policy objectives

102. The policy is to ensure that the Scottish Ministers act in accordance with international obligations\(^{37}\) in regard to the assessment of the effects of certain public and private developments on the environment. The Scottish Ministers are obliged to provide documents and information to, and consult with, any member state of the European Economic Area (which includes the nations of the European Community plus Norway, Iceland and Lichtenstein) that is likely to be affected by a development in Scotland. As part of that information set there is an obligation to provide details of the measures taken in respect of adverse environmental effects of the project.

Alternative approaches

103. There is no alternative approach; if the Scottish Ministers were not to act in accordance with international obligations they would lay themselves open to infraction proceedings.

Consultation

104. Consultation was not required: the Scottish Ministers are required to act in accordance with international obligations.

Section 6 – Orders made otherwise than on application

Policy objectives

105. The intention is that the Scottish Ministers are able to promote and make orders in two particular circumstances. One, to enable them to act as the promoter of transport developments and two to ensure that if a promoter or operator abandons or neglects the work subsequent to the authorisation of an order or fails to comply with the terms under which authorisation has been provided that the Scottish Ministers can take any necessary steps to resolve the situation and to recover any costs associated with making right the prevailing situation. In the latter case the expectation is that appropriate regulatory bodies will make the initial objection to the Scottish Ministers.

106. The Scottish Ministers currently require others parties to promote, via the Private Bill process, certain developments which are substantially funded by and are fully consistent with the expressed intentions of, the Scottish Executive. There is currently no legislative means, for instance, to enable the Scottish Executive to promote a railway or tramway. Transport Scotland was recently established with a remit which includes promotion and management of major infrastructure developments. Working as an agency of the Scottish Ministers it is expected that this body will be instrumental to the Scottish Ministers in the promotion of, in particular, national transport developments.

Alternative approaches

107. No alternative approaches were considered.

Consultation

108. The Procedures Committee report suggests that it should be possible for the Scottish Ministers to promote orders. No contrary views were expressed during the consultation period.

Section 7 – Model provisions

Policy objectives

109. The policy intention is to ensure that the draft order of the promoter accurately conveys the intentions of the promoter and in so doing addresses all likely, pertinent issues in respect of the content of the order, as well as adopting a clear style and readily understandable format. By having a power to provide guidance the Scottish Ministers, either in the light of experience or in response to a request from potential promoters, are able to issue model provisions. These should be of assistance to promoters. This a proportionate response as it is neither heavy-handed and directive as might be the case in imposing model sections nor is it an abrogation of responsibility in assisting promoters, when necessary, to ensure the smooth operation of the process.

Alternative approaches

110. The Scottish Executive considered whether it would be appropriate to direct that model provisions should be incorporated within draft orders. It was concluded, however, that this might generate potential problems in that the mandatory inclusion of particular provisions could give rise to the perception that such provisions would be incorporated in the final order and therefore impliedly would be out of scope of any examination.

111. Consideration was also given to not providing a power to the Scottish Ministers to provide guidance on the basis that any draft orders should be totally the responsibility of the promoter and that any shortcomings were a matter for the promoter and not the Scottish Ministers. The view was taken that such an approach in relation to an inexperienced promoter would be an abrogation of efficient process management.

Consultation

112. No comments have been raised or received on the matter.
Section 8 – Objections

Policy intentions

113. The policy intention is that anyone should be eligible to make a meaningful objection within a stated timeframe. The process will be as straightforward as possible, in order to encourage those who wish to, to make a objection, while ensuring that the objection is meaningful and useful. The Bill enables rules regarding the objection period to be set out in secondary legislation.

114. The rules on objections will set out basic requirements that all valid objections should meet. For reasons of consistency the period of time for making objections will be six weeks, this aligns with the time-period currently available for making objections in respect of road orders.

115. All objections will be made available to the promoter. The policy intention behind this is to ensure that the promoter is aware of people’s views on the application and, if necessary, can consider ways in which to mitigate any objections in advance of the examination.

116. The Scottish Ministers will take into account any objections, before deciding whether or not to make an order. Where the Scottish Ministers cause an inquiry or hearing to be held, they are required to take into consideration the reporter’s conclusions. This is in order that the minister is able to make a fully-informed, justifiable decision on whether the application should be approved. The Scottish Ministers may disregard any objection which they consider to be frivolous or trivial, objections which are subsequently withdrawn and objections which relate to matters of compensation (which fall to be determined by the Lands Tribunal for Scotland). In order to ensure the efficiency of the process, the Scottish Ministers are only obliged to consider meaningful objections relating to an application. Matters of compensation can be considered by the Lands Tribunal for Scotland.

Alternative approaches

117. Under the European Convention on Human Rights (ECHR), everyone has a right to respect of his/her private property. An objection period is therefore essential because the Scottish Ministers may make an order which extinguishes private and public rights. No alternative approach was considered.

Consultation

118. The consultation paper asked a pointed question about whether the duration of the objection period should be reduced from 60 days (under the Private Bills process) to 42 days (the objection period for trunk roads)\(^{38}\). The intention behind considering whether to reduce the objection period was to ensure conformity. The majority of respondents who indicated a preference in response to this question said that they were content for the objection period to be 42 days. To the best of knowledge, there have been no problems with the 42 day objection period used for trunk roads and therefore the Scottish Ministers believe that it is appropriate to seek consistency of approach.

\(^{38}\) The question was Q5: What are the implications of reducing the time period for objections from 60 to 42 days?
119. One respondent commented that the new process should accept representations as well as objections in order to create a more balanced viewpoint on the general feeling behind a scheme. It also offers an opportunity for individuals or organisations to seek information, clarification or make comments without making an official objection. Although the examination will obviously focus on the objections to an application, the processes behind the Bill will seek to encourage the submission of representations as well as objections as part of the objection period. This will be reflected in guidance resulting from the Bill.

Section 9 – Inquiries and hearings

Policy intentions

120. The policy intention is to allow in certain circumstances for a detailed examination of an application by an independent reporter, who is then able to make recommendations to the Scottish Ministers. This will allow an in-depth examination of all the pertinent issues relating to an application.

121. An inquiry or hearing will be held if it is requested by a local authority or national park authority within whose area the works are proposed to be carried out and/or anyone subject to compulsory purchase for the development. The Scottish Ministers may either afford other objectors an opportunity to be heard through an inquiry or hearing, or may consider their objection through written correspondence. The intention is to allow an opportunity for a fair hearing to statutory objectors (those who will be directly affected by an application) but also, subject to the Scottish Ministers discretion, others who object to the application. This, together with the possibility of subsequent court review under section 16, satisfies Article 6 of ECHR.

Alternative approaches

122. Under ECHR, a fair and public hearing must be provided when a person’s civil rights are being determined. The alternative would be to cause an inquiry to be held regardless of who objects to the application or their status in relation to it. This would create an inflexible system, unable to adapt according to the nature of an objection. It would be costly and inefficient.

123. Alternatively, the Scottish Ministers could retain complete flexibility over the examination approach and remove any status of the statutory objectors, treating all objectors at their discretion. This would be a step too far in not acknowledging the effect an application will have on certain objectors and failing to legitimise their objection.

Consultation

124. No comments have been raised or received on the matter.

Section 10 – Procedure at inquiries and hearings

Policy intentions

125. The policy intention is to ensure conformity and understanding for all parties taking part in the examination process and therefore the Scottish Ministers may make rules to apply to inquiries and hearings held under this Bill.
126. The Scottish Ministers will consult the Council on Tribunals, as per standard practice on any draft inquiry or hearing rules.

**Alternative approaches**

127. No alternative approaches were considered; rules are necessary for efficient and effective proceedings.

**Consultation**

128. No comments have been raised or received on the matter as the detail will be set out in secondary legislation. However, one respondent did comment that consideration should be given to financial aid being given to an objector at an inquiry. This issue will be considered further when drafting the rules. Draft rules should allow for flexibility within an inquiry or hearing thus enabling a reporter to adopt a more informal approach for certain objectors if the reporter, and other parties, consider that useful. This approach may be adopted in such a case where the objector is not legally trained and is not familiar with an inquiry. The proposed approach should assist objectors to present their case to their best ability.

**Section 11 – Making or refusal of orders under section 1**

**Policy intentions**

129. Once an inquiry or hearing has been conducted and the reporter’s report has been received the policy intention is that the Scottish Ministers will move expeditiously to make a determination, so as to ensure at the earliest opportunity that there is a degree of certainty for all parties. That determination may be to make the order, make the order with modifications or refuse to make the order. The Scottish Ministers may also make a determination in respect of only some of the proposals applied for, whilst making a separate determination in respect of (or deferring consideration of) other proposals. This enables the Scottish Ministers in cases where the application may consist of a number of proposals to make an order in respect of one project but not on another or others. It is unlikely that the Scottish Ministers would adopt such an approach since it is likely that small developments may be many aspects of a whole and the whole may not be possible without the approval of its constituent parts but an appropriate case may require this flexibility.

**Alternative approaches**

130. No alternative was considered.

**Consultation**

131. No comments have been raised or received on the matter.

**Section 12 – Publicity for making or refusal of order**

**Policy intentions**

132. The policy intention is that the Scottish Ministers’ decision should be fully transparent and accessible to the public. One of the test principles of the application is that the development
is in the public interest. It is therefore appropriate that the Scottish Ministers should account for their decision to the public.

133. The proposed developments are intended to be for the ultimate benefit of all interested parties. However, as has been identified earlier developments typically involve compulsory purchase and the interference with property rights as well as raising significant environmental issues. These are particularly important matters of major concern to those that are affected and therefore in the interests of fairness and transparency there must be a comprehensive public explanation of any decision.

Alternative approaches

134. By not giving full decisions the Scottish Ministers leave themselves open to infraction proceedings under the Public Participation Directive. No alternatives were considered.

Consultation

135. No comments have been raised or received on the matter.

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

136. The Scottish Ministers are particularly keen to ensure that an efficient process operates in respect of the authorisation of national developments that are essential to the economic well-being of Scotland. Recognising the national interest of such developments the Scottish Ministers are also keen that such national developments should be subject to express authorisation by the Scottish Parliament.

137. It is proposed therefore that certain transport developments will be developments of truly national (rather than regional or local) importance and will be designated as such within the National Planning Framework (NPF). The NPF is the culmination of a range of national and sub-national plans, policies and strategies. Inclusion within the NPF should allow national transport developments to be seen more clearly both in terms of their contribution to increasing connectivity as well as in terms of their secondary effects on trade and spatial reorganisation.

138. In its scrutiny of the NPF the Scottish Parliament will be considering the principle of and need for identified national transport developments. The Scottish Parliament will not be making any decision on the planned location of the developments for to do so would deny local people an opportunity to contribute to the appropriateness of the exact location, a matter which is more properly addressed when a specific proposal, such as would be proposed in an order or planning application, is subject to detailed scrutiny. That approach enables the reporter in the examination of such a development to be guided by the NPF and the views expressed by the Scottish Parliament. Following its parliamentary scrutiny, the NPF would clearly be a material consideration for the reporter to take into account since it would have established both the national strategic policy context and the principle and this should ensure that the independent examination concentrates on local effects and any other material aspect of the proposed development that causes concern within the community.
139. The Scottish Parliament’s role in respect of the NPF and the subsequent approval (by means of an affirmative measure) will add weight and accountability to the overall decision-making process in respect of national developments.

**Alternative approaches**

140. The Procedures Committee report\(^{39}\) states, with appropriate clarification added in parentheses, that:

“For the longer term, we recommend a statutory system that will allow the principal responsibility for handling such applications to be transferred to the [Scottish] Executive, but subject to appropriate Parliamentary oversight. Under the “TWA-plus” approach, promoters would seek an order made by [the Scottish] Ministers rather than an Act of the [Scottish] Parliament, and the detailed scrutiny and consideration of objections would be done at a local public inquiry operating under statutory rules rather than by a [Scottish] Parliamentary committee operating under standing orders. The [Scottish] Parliament would have an opportunity to scrutinise and, if need be, reject, any such order both early in the process and at the end.”

141. The Committee therefore proposes two instances of Parliamentary scrutiny the first early in any process and the second at its conclusion. It will be noted that the Scottish Ministers’ proposals enable, at an early stage, national developments to be subject to national scrutiny by the Scottish Parliament and for the final authorisation to reside with the Scottish Parliament.

142. The Scottish Ministers are anxious to ensure that engagement of the Scottish Parliament is proportionate; a greater level of engagement might result, in effect, in a replication of the level of involvement that currently occurs under the Private Bill process (a level which the Scottish Parliament has advised is unacceptable); less or no scrutiny would not provide an appropriate level of national endorsement to developments that will have a significant bearing on national interests.

143. The proposed approach is therefore in line with the spirit of the Committee’s proposals.

**Consultation**

144. The consultation paper directs readers to two specific questions on the issue of the level of Parliamentary scrutiny. The first relates to Parliamentary scrutiny before a public examination of the issues pertinent to an application and secondly, whether Parliamentary scrutiny should be extended beyond developments contained within the NPF\(^{40}\). Few concerns were expressed through the consultation responses about the level of Parliamentary scrutiny proposed in the Bill. Aside from one response, no other respondent believed that Parliamentary scrutiny should extend beyond national developments designated in the NPF. Two respondents called for some form of additional scrutiny in certain situations; one for third party scrutiny where the promoter is the Scottish Executive, Transport Scotland or a local authority and the

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\(^{39}\) Paragraph 118 of that report refers

\(^{40}\) The two questions were: Q6: Are there any reasons why, once the Scottish Ministers have determined that the application meets the procedural conditions and the specified criteria conditions, that the application should be considered by the Scottish Parliament prior to a public examination of the objections? And Q7: Are there any reasons for extending Parliamentary scrutiny and approval of developments beyond those contained within the NPF?
other for the Scottish Parliament to make the final decision in a situation where the Scottish Ministers disagree with the reporter’s recommendations.

145. One of the key aims behind the new process is to ensure that consideration and authorisation of a transport proposal can take place as expeditiously as possible. That has been one of the main criticisms of the Private Bills process by respondents to the consultation. However, by introducing more levels of authorisation, there is a risk of prolonging the authorisation process, because before any kind of authorisation can take place, a proper consideration of the issues is required in order to make a valid judgement. A full exposition of the issues will be undertaken at the examination. If the Scottish Parliament or another form of scrutiny takes place prior or subsequent to the independent public examination by a reporter, further examination of the issues, by the Scottish Parliament or the third party, will be required. We do not believe this would be conducive to operating an efficient process. Indeed, some respondents expressed concern at the suggestion of scrutiny by the Scottish Parliament prior to an examination, given that objections to the scheme will not have been explored at that stage.

146. The consultation paper also asked whether it should be possible for the Scottish Ministers to designate transport developments not in the NPF for Parliamentary consideration. Of the responses received in relation to this question, there was unanimous agreement that this should be possible.

Section 14 – Consents etc. under other enactments

Policy intentions

147. The policy intention is that the Bill process is efficient and can be used as a “one-stop-shop” for authorising permissions, licenses and consents that may be required for a particular transport development. The intention is that any specific public scrutiny regarding pertinent permissions, licenses or consents can take place as part of the general scrutiny by the independent reporter of the application as a whole rather than separately (e.g. through the local authority). The section provides that the Scottish Ministers may make regulations which specify particular permissions, licenses and consents which may be dealt with through an order made under the Bill, and/or which may be granted through a particular procedure that assimilates otherwise disparate procedures.

Alternative approaches

148. The only alternative would be to exclude permissions, licences and consents from being granted as part of an order, leaving them to be granted separately. This would not make for an efficient process as it would lead to a duplication of processes.

Consultation

149. The consultation paper does not address this issue specifically but stakeholders have been consulted through bi-lateral meetings and workshops. There has been overwhelming support for this section to be included in the Bill. One respondent expressed some concern that certain

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41 This was contained within Q7: Do you agree that it should also be possible for the Scottish Ministers to designate other transport related projects not in the NPF for Parliamentary consideration should they see fit?
consents would not receive sufficient consideration when incorporated with the examination of the application as a whole. However, there is deliberately no restriction on the length of an examination in order that all issues can be explored fully and any objections to a particular consent can be taken into account as part of the examination.

Section 15 – Town and country planning

Policy intentions

150. The policy intention is that a promoter may be granted planning permission, if required within the context of a transport application, if the order for a project is made. This is to ensure that the process of authorising a transport development is efficient and can operate as a “one-stop-shop” in relation to planning permission and other permissions, licenses and consents (see also section 14). The intention is that any specific public scrutiny regarding planning permission can take place as part of the general scrutiny by the independent reporter of the application as a whole.

Alternative approaches

151. The only alternative would be to exclude planning permission from being granted as part of the order process, and would therefore have to be granted separately. This would not make for an efficient process as it would lead to a duplication of processes.

Consultation

152. No comments have been raised or received on the matter, other than one respondent who sought clarification on the distinction between what type of work would be covered by planning permission granted through the order and more detailed planning consent, granted through the local authority. Whilst an order may specify the level of work sought under deemed planning permission, it is likely that guidance will be produced on the distinction between permission granted by the order and permission granted by the local authority.

Section 16 – Validity of orders under section 1

Policy intentions

153. The policy intention is that the process should operate effectively and efficiently, open to public scrutiny, with well-informed decisions being taken promptly. Where the procedures do not operate as they should then any person should be able to challenge the substantive or procedural legality of decisions before the courts.

Alternative approaches

154. The only alternative considered was not to permit an opportunity for challenge. That was swiftly rejected on the grounds of being against natural justice and ECHR particularly when an order is likely to authorise the compulsory purchase of private property and extinguishment of rights.

Consultation

155. The issue has not been subject to consultation.
Section 17 – Powers of certain bodies to apply for, or object to, order under section 1

Policy intentions
156. The policy intention is that there will be no diminution in the power of those statutory bodies, such as regional transport partnerships\(^42\), that currently have the power to promote or oppose a Bill; they will have similar powers in respect of the promotion of, or an objection to, orders.

Alternative approaches
157. No alternative approach was considered.

Consultation
158. The issue has not been subject to extensive consultation though the issue has been discussed with various statutory bodies with current powers to promote or object to legislation. No contrary views were presented.

Section 18 – Access to land

Policy intentions
159. The policy is that at the time of application the promoter should have all relevant information available in order to ensure that the consideration of the proposed scheme can take place efficiently and effectively.

160. In order to assist the promoter in the development of their proposals and the putting together of the application it would be beneficial for the promoter to be able to inspect and survey land in order to ascertain the suitability of the land for the proposed transport scheme and to obtain information necessary for the environmental impact assessment. It is hoped that the promoter will be able to obtain access to land by agreement with the relevant owner and occupier of the land relevant to their project. If however agreement cannot be reached the intention is to provide a regime, subject to strict safeguards, so as to permit a bona fide promoter that access.

161. One of the outcomes of permitting promoters access to land is that it provides an opportunity for greater specification so that the lines of deviation may be more tightly drawn with consequential potential reduction in blight.

Alternative approaches
162. An alternative approach is simply not to provide a statutory power. That was rejected; the intention is for the new order making process to operate efficiently and effectively so as to enable well informed determinations to be made expeditiously.

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\(^42\) Schedule 1, paragraph 10(1), Transport (Scotland) Act 2005.
Consultation

163. The consultation paper asked what process should be used to allow promoters to enter land\(^{43}\). Overall, respondents were in favour of granting promoters the power to access land, subject to appropriate safeguards. A few respondents indicated that the type of information required by the promoter through access to land should already be available in the public domain. That is a valid comment and will be taken into account for the order and guidance, on the basis that anyone seeking access to land should have exhausted all other means of obtaining the information they require. Another respondent suggested that one of the restrictions should be that the information gained through the access to land cannot be sold onto a third party by the promoter. Again, this is a valid concern worthy of further consideration.

164. A number of respondents sought clarification on the certificate of fitness and one suggested that there should be a register of bodies to which access to land has been granted. The precise mechanism surrounding the certificate of fitness will be provided within secondary legislation. It was also suggested that a promoter should on entering land be accompanied by an officer of the local planning authority or the police so as to ensure that there is some independent oversight when conducting activities on site. Further comments were made regarding notification and the nature of activities that might be performed on the land. It was also suggested that the promoter should be responsible for recording conditions prior to commencement, during and after completing work so that any requests for compensation can be dealt with appropriately. Those and other comments will be taken into consideration in the preparation of the secondary legislation and will be subject to extensive consultation.

Section 19 – Service of notices and other documents

Policy intentions

165. The intention is to ensure that the manner of the communication of notices and other documentation is appropriate in all occasions. Notices will be served by post, delivered or transmitted electronically or, only in particular circumstances and when other options are unavailable, affixed to a building or object on land.

Alternative approaches

166. No alternative approach was considered.

Consultation

167. The issue has not been subject to formal consultation. It was discussed directly with stakeholders when formulating the Bill’s provisions at which all expressed their satisfaction with the intention.

\(^{43}\) The question was Q3: What process should apply to enable a promoter, without a statutory right, to enter land to conduct preliminary investigations?
Section 20 – Annual report

Policy intentions
168. The policy is to place the Scottish Ministers under a duty to publish an annual report on certain matters relating to the operation of the order making process. The purpose of the publication is threefold: one, to reaffirm the transparency of the operation of the process and thereby engender confidence in its operation; two, to indicate how effectively the process is operating and provide in a single document details of who has made an application for an order, and for what purposes, what orders have been made or not been made together with a summation of the reasoning for the decision and importantly to identify in the making or not making of the decision the length of time taken between the application and decision of the Scottish Ministers; and three, to provide a public reference document that will reduce enquiries on the progress of individual developments.

Alternative approaches
169. Consideration was given to not making the publication of the report a statutory obligation, however, it was concluded that by placing the Scottish Ministers under an express duty the express intent of an efficient, effective and transparent process would be reaffirmed.

Consultation
170. Though the issue has not been subject to formal consultation many stakeholders at the consultation workshops expressed the view that such a measure, with statutory backing, is particularly welcomed.

Section 21 – Orders under the Light Railways Act 1896

Policy intentions
171. The intention is that the Scottish Ministers will in future for reasons of general consistency of approach make orders under the legislation promoted within the Bill instead of reverting to the Light Railways Act 1896.

Alternative approaches
172. The only alternative approach considered was to make no change to the existing legislation. This was rejected in favour of a more consistent approach for authorising developments.

Consultation
173. The consultation paper Proposals for a new approach to delivering public transport infrastructure developments advised on the scope of the proposed order-making process. The issue was also discussed with stakeholders.

Section 22 – Interpretation
174. This section defines terms used within Part 1 of the Bill.
Section 23 – Amendment of Roads (Scotland) Act 1984

Policy intentions
175. The intention is to ensure consistency in the authorisation of all nationally significant developments and thereby ensure that the creation of trunk roads is approved in a manner similar for instance to a new railway.

Alternative approaches
176. The only alternative approach considered was to make no change to the existing legislation. This was rejected as it would not have met the policy intention.

Consultation
177. Specific views were solicited within Proposals for a new approach to delivering public transport infrastructure developments on proposals to attach express Parliamentary approval to road developments of national significance. While most respondents agreed with the inclusion of the creation of new trunk roads within scope one respondent suggested that there was no compelling reason to change the current procedures and that any change should only occur as part of a phased approach, made in the light of operational experience. Another respondent commented that the inclusion of roads within scope would not significantly improve the current road related procedures.

Section 24 – Amendment of Harbours Act 1964

Policy intentions
178. The intention is to ensure consistency in the authorisation of all nationally significant developments and thereby ensure, as is the intention with the creation of trunk roads, that nationally significant harbour developments should similarly be subject to Parliamentary approval.

Alternative approaches
179. The only alternative approach considered was to make no change to the existing legislation. This was rejected as it would not have met the policy intention. There is an argument that harbour developments are, unlike roads and rail developments, privately funded and therefore should not be subject to similar levels of scrutiny. A contrary argument is however that ports and harbours are currently by definition inter-modal hubs, and cannot be treated separately from the publicly funded land transport infrastructure which underpins their functions.

Consultation
180. The policy intention to align the authorisation of national transport developments was mentioned in the consultation paper Proposals for a new approach to delivering public transport infrastructure developments.

181. Respondents communicated a range of views. Some argued that nationally significant harbour and port developments should be within scope particularly where developments connect ports with the wider transport network. Other respondents expressed a contrary view, stating that
there were no compelling reasons for changing the existing procedures. A third view was promoted by a respondent which suggested the future inclusion of harbours (and other transport modes) within scope but only if the new procedures were found to be effective in their operation.

182. In the consultation it was accepted that there was no impetus to bring harbours within the scope of Parliamentary approval. Further reflection, however, suggests that the opportunity presented by the Bill does enable all transport developments, that are currently authorised either under a Private Bill or via an order made by the Scottish Ministers, to be treated in a like manner and the Bill’s provisions reflect this approach.

Section 25 – Amendment of Pilotage Act 1987

Policy intentions

183. The intention is to enhance the notification arrangements and the process for the making of objections so as to align procedures that apply in other transport related areas.

Alternative approaches

184. The only alternative approach considered was to make no change to the existing legislation. This was rejected as it would not have met the policy intention.

Consultation

185. The proposals were set out within the consultation paper and the over-whelming response was favourable to the Bill’s proposals.

186. There was some concern about changes to the way applications are publicised. It was advised that the current method of notifying persons likely to be affected works well, with those who are not near the port or are infrequent users being notified and that reliance on public notices may not provide an effective mechanism of notifying all stakeholders. The Bill’s provisions have addressed this concern.

187. Concern was expressed that changing the method of notifying interested parties together with an undertaking to investigate any objections would increase the potential to hold up pilotage orders. A contrary view noted that having a 42 day period for the raising of objections is a satisfactory compromise by making the decision making process swifter, while maximising public involvement and the opportunity to deal with objections.

Section 26 – Amendment of Transport (Scotland) Act 2001

Policy intentions

188. The policy is to enable the Scottish Ministers to provide funds to a third party that may be used subsequently to fund and operate a voluntary purchase scheme for properties which, whilst not eligible for purchase under compulsory purchase arrangements, may be affected by the

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construction and operation of a transport development. Additionally, the Scottish Ministers will make public to whom and for what purposes the funds have been disbursed.

Alternative approaches

189. The alternative is to retain the existing arrangements which allow the Scottish Ministers and those promoters funding their own developments to fund and operate voluntary purchase schemes but do not permit promoters to use funds provided by the Scottish Ministers for the development of a transport scheme to use those funds to operate a voluntary purchase scheme. The new approach rectifies an anomaly and ensures a promoter, using funds provided by the Scottish Ministers, will now be able, as is the case with Scottish Ministers, to operate a voluntary purchase scheme.

Consultation

190. Though a formal consultation on the proposals has not been conducted discussions have been held with promoters and the Scottish Ministers announced their intention to come forward with a policy position on voluntary purchase schemes.

Sections 27 – Further provision as regards rules, regulations and orders

Policy intentions

191. The intention is that the scrutiny of the Scottish Parliament should be proportionate to the matter under consideration therefore the Scottish Parliament should approve by affirmative procedures orders relating to nationally significant developments (see section 13), any other orders that the Scottish Ministers believe warrant Parliamentary interest and, in the first instance, all rules or regulations, and the appropriate orders, emanating from the Bill so as to ensure their appropriateness.

192. The intention is that non-national developments, being generally of local interest and therefore inappropriate for Parliamentary scrutiny, will be determined by the Scottish Ministers.

Alternative approaches

193. The proposals of the Procedures Committee were considered. These included the express approval of Parliament for all but the most minor of transport developments and where the Scottish Ministers are acting as the promoter, the use of super-affirmative procedures. After due consideration and reflection these were rejected as being disproportionate. The Scottish Ministers have concluded that the proposed process by being inclusive and transparent provides an appropriate level of democratic oversight both in terms of participative and representative democracy.

45 The Minister for Transport and Telecommunications announced the intention to come forward with a policy position to the Waverley Railway Bill committee on 27 March 2006. http://www.scottish.parliament.uk/business/committees/waverlyRB/or/wr06-0802.htm
Consultation

194. The consultation paper *Proposals for a new approach to delivering public transport infrastructure developments* advised of the approach to be taken and the extent of Parliamentary engagement. The over-whelming response from respondents to the consultation paper concurred with its proposals.

Section 28 – Modification and repeal of enactments

Policy intentions

195. The intention is to remove the requirement for special Parliamentary procedure (SPP) and instead enable the Scottish Ministers to make a determination. (Section 28 has to be read in conjunction with the modifications and repeals in schedules 2 and 3).

Alternative approaches

196. The only alternative approach considered was to make no change to the existing legislation. This was rejected as it would not have met the policy intention.

Consultation

197. The intention to remove SPP was raised within the consultation paper. 46

198. Most respondents agreed with the proposed changes. Concerns, however, were expressed that in being promoters of road projects the Scottish Ministers will have an interest and will thus, after an inquiry has been held, be determining the outcome by judging their own cases. The impartiality of the decision maker in such circumstances was therefore left to question. Another respondent commented that the Scottish Ministers should have proper regard to the findings of any inquiry reporter and follow the findings in the absence of any other material considerations.

199. It was noted by respondents with harbour interests that Ministerial determination and an inquiry-based system would bring certain advantages compared with the existing Parliamentary process though concern was expressed about possible delay and complications caused by an inquiry-based system with Ministerial determination and it was suggested that consideration should be given to a timetable within which decisions should be made. It was commented on that there was a need to have some mechanism in place to deal with politically-difficult decisions so that they could not be easily deferred.

200. A concern was raised by a harbour interest about procedures following the detailed examination at an inquiry by which the Scottish Ministers would be empowered to make an alternative determination to that which was recommended by the inquiry and that therefore there would be the potential for a conflict of interest between the Minister being a party to the inquiry as well as being the decision maker. It was proposed by a respondent that SPP ought to be retained in order to address matters where the Scottish Ministers disagree with the recommendations of the inquiry. It was also suggested that any inquiry should be accessible where appropriate, to the public and subject to official scrutiny and that the Scottish Ministers

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should be required to justify their reasoning and decisions in all cases. There was also a concern raised about the implications and ramifications of there being no apparent right or means of appealing decisions made by Scottish Ministers.

201. The Scottish Executive has considered these issues and is confident that the proposed process has sufficient safeguards to ensure that the concerns raised by some respondents are unfounded: the inquiry or hearing is to be conducted by an independent person and the Scottish Ministers remain accountable for their decisions to the Scottish Parliament (and the courts).

EFFECTS ON EQUAL OPPORTUNITIES, HUMAN RIGHTS, ISLAND COMMUNITIES, LOCAL GOVERNMENT, SUSTAINABLE DEVELOPMENT, BUSINESS COMMUNITY, VOLUNTARY ORGANISATIONS AND THE SCOTTISH PARLIAMENT

Equal opportunities

202. It is assessed that the provisions of the Bill are not discriminatory on the basis of gender, age, disability, sexual orientation, marital status, race or religion.

203. The Scottish Executive currently offers a grant to Planning Aid for Scotland (PAS) to help implement the Scottish Ministers’ public involvement agenda. PAS have included in this work the provision of planning information in community languages. In addition the Scottish Executive intends to publish, in late November 2006, a planning advice note on community involvement, which will provide practical guidance on community engagement and discuss approaches for effective involvement to suit different scenarios.

204. The National Standards for Community Engagement (May 2005), published by Communities Scotland, is a good practice tool which will help to deliver a framework to help people influence the planning and delivery of services in their area. It created a common set of ground rules for working relationships between communities and agencies delivering public services and will be especially relevant when local authorities, the regional transport partnerships or indeed the Scottish Ministers are the promoters of transport developments.

Human rights

205. The Scottish Executive is satisfied that the Bill’s provisions are compatible with the European Convention on Human Rights. Compliance with this Convention has been considered throughout the process of policy development and drafting.

206. Article 6(1) of the Convention requires that in the determination of their civil rights and obligations, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal, established by law. The Bill provides for appropriate examination before a decision is made and thereafter a right of legal challenge to the Court of Session, and in the view of the Scottish Executive this ensures that the provisions are compliant with Article 6.
207. The Bill also gives the Scottish Ministers the power to grant rights of entry to those promoters who do not have a statutory power to survey land so as to identify the most appropriate route for the proposed scheme, and to establish information necessary to complete a comprehensive environmental report. These rights are subject to safeguards and may only be exercised in strict accordance with the manner prescribed by the Scottish Ministers. A promoter must make reparation for any damage or disturbance caused. The Scottish Executive considers that that measure is proportionate and does not breach the Convention.

208. Article 1 of Protocol 1 to the Convention guarantees peaceful enjoyment of possessions. The Bill seeks to continue to balance fairly the rights of the individual with those of the wider public interest.

Island communities

209. The Bill makes no distinction positive, negative or otherwise between the various communities of Scotland.

210. An island local authority and an island based harbour authority participated in the consultation exercise and raised generic rather than island specific issues and concerns about the proposals to replace special Parliamentary procedure by determination by the Scottish Ministers. The Bill’s provisions will apply across Scotland and in so doing will not, intentionally or otherwise, treat or affect the island communities in a manner different to other communities in Scotland.

Local government

211. The Bill will have a neutral effect on local authorities. Under the current Private Bill process local authorities may promote and object to development proposals, and that right of promotion and objection will be retained under the new procedures.

212. As planning authorities, local authorities are currently responsible for ensuring adherence to planning conditions attached to developments authorised by the Private Bill process, that responsibility will remain under the new procedures.

213. In certain circumstances the local authority is a consenting authority. The creation of a “one stop-shop” under the Bill for the consideration of consents, licences and permissions will generate a slight impact on local authorities, in that it may remove their determination on a particular consent (e.g. listed building consent). However, the local authority will, of course, be able to object to any aspect of the proposed order if they disagree with it being granted.

214. The expectation is that the level of applications for orders will not be appreciably greater than the level of transport-related private Bills and therefore the effect on local authorities across Scotland should be broadly stable.
Sustainable development

215. In a modern and environmentally responsible Scotland the impact of new transport infrastructure on the built and natural environment must be fully considered so as to ensure that the developments operate sustainably, in economic, environmental and social terms.

216. All the proposals set out within the Bill take due account of environmental legislation. The National Planning Framework and the national and regional transport strategies, will be subject to strategic environmental assessment, which allows for the consideration of the full range of environmental impacts during their development. As has been previously mentioned, STAG, which makes environmental impact one of the five key assessment criteria, will be applied. Once the final development is determined the promoter will be required to provide in support of the application an environmental statement as well as a code of construction practice and for those developments affecting Special Areas of Conservation, Special Protection Areas or Ramsar sites additional specific information.

Business community

217. The Bill’s proposals seek to make a positive, environmentally responsible contribution to the economic well-being of Scotland. It is expected that greater connectivity provided by appropriate transport developments will be of national benefit assisting businesses in reaching markets and providing access opportunities for employment. The intention is that all developments whether sponsored by the business community, public sector or in combination will be treated dispassionately with decisions regarding authorisation based on financial viability, the effect on the environment, the degree to which the proposed development accords with national and local policies and finally whether the development can be positively adjudged to be in the public interest.

218. Small businesses are likely to be involved as objectors to proposals, because of concerns about the potential effects of the construction or operation on their business. There is nothing within the proposals that in any way diminishes the right of small businesses to make objections about a particular proposal. Indeed, the emphasis on greater levels of engagement and more complete information should enable them to make an informed assessment of the likely impact and respond accordingly.

Voluntary community

219. The Scottish Ministers recognise the contribution and expertise of community based voluntary groups. It is important that such groups are meaningfully and actively engaged in the consultation process in order to provide helpful feedback into the design development process. The Bill’s secondary legislation will obligate promoters to enter into meaningful engagement with community groups and provide an account of that engagement within the documentation in support of their application.

220. Charitable concerns may be involved in the promotion of heritage railways. These are currently pursued via a light railway order. They are generally small scale developments which are often uncontentious as there is a tendency for a degree of local participation in both the construction as well as the subsequent operation. The Scottish Ministers have recognised that the
This document relates to the Transport and Works (Scotland) Bill (SP Bill 66) as introduced in the Scottish Parliament on 26 June 2006

production of the necessary documentation is a potential administrative and financial burden and for that reason provisions have been made to permit the Scottish Ministers to vary the application fees and information sets required so that they relate to the specific needs of the proposed project.

Scottish Parliament

221. The Bill will have a significant impact on the operation of the Scottish Parliament. By providing a new authorisation process and removing special Parliamentary procedure in respect of transport related developments, Parliamentary engagement will in future be focussed on the consideration of developments of strategic national importance.

222. The consequences of the new process will be many fold. The Private Bill Unit’s workload, for instance, will be substantially reduced, as will the associated requirements for legal services, official reports, and the production and publication of supporting and explanatory materials. Parliamentary space will also be realised. One of the most significant positive impacts is that the new process will relieve MSPs from the consideration, often of considerable and intense duration, of the detailed technical minutiae of individual developments and instead enable them to consider more appropriate matters of national policy as well as developments of national significance.
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TRANSPORT AND WORKS (SCOTLAND) BILL

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