

TRANSPORT (SCOTLAND) BILL

POLICY MEMORANDUM

INTRODUCTION

1. As required under Rule 9.3.3 of the Parliament's Standing Orders, this Policy Memorandum is published to accompany the Transport (Scotland) Bill introduced in the Scottish Parliament on 8 June 2018.
2. The following other accompanying documents are published separately:
 - Explanatory Notes (SP Bill 33–EN);
 - a Financial Memorandum (SP Bill 33–FM);
 - statements on legislative competence by the Presiding Officer and the Scottish Government (SP 33–LC).
3. This Policy Memorandum has been prepared by the Scottish Government to set out the Government's policy behind the Bill. It does not form part of the Bill and has not been endorsed by the Parliament.

BILL CONTENT

4. The Bill is structured in the following Parts:
 - Part 1 – Low emission zones: makes provision in relation to the creation and enforcement of low emission zones in Scotland.
 - Part 2 – Bus services: ensures that local transport authorities have viable and flexible options to improve bus services in their areas.
 - Part 3 – Ticketing arrangements and schemes (“smart ticketing”): makes provision enabling the Scottish Ministers to specify a national technological standard for the implementation and operation of smart ticketing arrangements and providing local transport authorities with additional powers to develop and deliver effective smart ticketing arrangements and schemes.
 - Part 4 – Pavement parking and double parking: introduces prohibitions on parking on pavements and double parking.
 - Part 5 – Road works: enhances the role of the Scottish Road Works Commissioner (SRWC) and the wider regulation of road works.

- Part 6 – Miscellaneous and general: includes providing Regional Transport Partnerships (Transport Partnerships) with more financial flexibility and improves the governance of Scotland’s canals.

POLICY OBJECTIVES OF THE BILL

5. The Scottish Government’s overall purpose is to increase sustainable economic growth. The legislative measures contained within the Transport (Scotland) Bill (‘the Bill’) will contribute to Scotland’s Economic Strategy, having a positive impact in particular on two of its four priorities: an economy where growth is underpinned by long-term sustainable investment in people, infrastructure and assets; and an economy where growth is based on innovation, change and openness to new ways of doing things.

6. The policy contributes to a number of the Scottish Government’s National Outcomes: we live longer, healthier lives; we realise our full economic potential with more and better employment opportunities for our people; we have tackled the significant inequalities in Scottish society; we live in well-designed, sustainable places where we are able to access the amenities and services we need; we reduce the local and global environmental impact of our consumption and production; our public services are high quality, continually improving, efficient and responsive to local people’s needs.

7. The provisions within the wide-ranging Bill aim to ensure Scotland’s transport network operates with greater efficiency, better accessibility and with improved air quality in its towns and cities. The legislative measures will help to empower Scotland’s local authorities and establish consistent standards to make transport easier, cleaner and smarter than ever before, therefore supporting the Scottish Government’s aspirations to deliver a safe, efficient, cost-effective and sustainable transport system for the benefit of the people of Scotland.

8. Transport is a key facilitator for societal improvement and cohesion, therefore the Bill will have a positive impact on the Scottish Government’s purpose to create a more successful country, with opportunities for all of Scotland to flourish, through increasing sustainable economic growth. Individual components within the Bill will be delivered and implemented across differing timescales, subject to its passing and subsequent secondary legislation. As such, measurable impacts will feed through over a period of time and be assessed by individual policy areas.

POLICY OBJECTIVES OF THE BILL – GENERAL OVERVIEW

Low emission zones

9. Scotland is a world leader on tackling climate change, with the recently-introduced Climate Change (Emissions Reduction Targets) (Scotland) Bill outlining the Scottish Government’s commitment to increasing its long-term targets to reduce greenhouse gas emissions by at least 90% by 2050.

10. Improving air quality is at the centre of the Scottish Government’s action on transport and place-making, to ensure the real and tangible health benefits associated with cleaner air are

maximised. The Scottish Government has progressively reduced air pollution in Scotland over recent years, but poor air quality – predominantly caused by road transport – remains an issue at a number of hotspots in Scotland’s towns and cities.

11. Health impacts from air pollution are a key primary driver for the low emission zone implementation. Transport-related air pollution caused by fine particulate matter (PM2.5 and PM10) and gases such as nitrogen oxides (NOx) impact on human health. Air pollution can have a particular impact on the very young and old, and those with existing respiratory and cardiovascular conditions, where air pollution can exacerbate existing health conditions (especially heart disease and respiratory illnesses) of vulnerable individuals.

12. *Cleaner Air for Scotland: The Road to a Healthier Future* (2015)¹, Scotland’s first distinct air quality strategy, commits to reducing air pollution and fulfilling Scotland’s legal responsibilities² on the issue as soon as possible; and the Programme for Government (PfG) 2017-18 states that “We will work with local authorities to introduce low emission zones into Scotland’s four biggest cities between 2018 and 2020 and into Air Quality Management Areas by 2023, where the National Low Emission Framework advocates such mitigation”.

13. To help achieve this, the Bill enables the creation, and civil enforcement, of low emission zones by local authorities and allows the Scottish Government to set consistent standards for emissions, penalties, and certain exemptions for low emission zones.

Bus services

14. Bus services play a vital role for people and communities across Scotland. Their flexible nature means buses are able to serve a much wider area than transport modes such as rail, which can be more restricted by geography and, of course, fixed infrastructure. New routes and services can be developed and introduced quickly where demand is identified, making bus provision important, particularly to rural areas where other options may be limited.

15. In addition to bus services’ wide geographical reach and ability to penetrate deep into Scotland’s diverse urban and rural communities, the socio economic diversity of the people who use them is also important. People with lower incomes tend to use the bus more frequently than they use other modes of transport. Car ownership is less prevalent in lower income groups³, making bus services particularly important owing to the lack of alternatives.

16. A University of Leeds report⁴ identified a number of significant linkages between bus services and the wider economy including access to jobs, shopping and leisure facilities. The conclusion of that report was that people place value upon having the bus as an option for them and for their community.

¹ <http://www.gov.scot/Resource/0048/00488493.pdf>

² The Scottish Air Quality website provides more information on the topic of air quality legislation at <http://www.scottishairquality.co.uk/air-quality/legislation>

³ Transport and Travel in Scotland (2016), table 18.

⁴ Buses and the Economy II – University of Leeds, 2014. <https://greenerjourneys.com/publication/buses-economy->

17. Buses only contribute around 5% of road transport carbon emissions, compared to cars' contribution of 60%. With their large passenger capacity per vehicle they have the potential to play an important role in encouraging modal shift, removing cars from the road, thereby reducing both overall emissions and congestion.

18. The Bill aims to improve on the current legislative framework governing bus services in Scotland, principally the Transport (Scotland) Act 2001, which enabled a new range of local responses:

- “Quality contract schemes”, allowing local transport authorities to contract (or franchise) specified services in a designated area;
- “Quality partnership schemes”, allowing local transport authorities to attach conditions to the use of specified infrastructure such as priority lanes or bus stations; and
- “Ticketing schemes” allowing local transport authorities to require multi-operator ticketing arrangements.

19. The Bill aims to give local transport authorities more flexibility to respond to local needs by pursuing partnership working with operators on a statutory basis, by local franchising or by running their own buses. The Bill also includes measures to improve the information available to passengers, making bus travel a more attractive option, and makes provision for information to be provided to local transport authorities when services are deregistered, helping them where necessary to secure alternative services.

Smart ticketing

20. In 2012 the Scottish Government set out a vision that all journeys on Scotland's bus, rail, ferry, subway and tram networks can be made using some form of smart ticketing or payment. Despite some adoption of smart payment by transport operators, progress has been limited, with smart ticketing not being developed consistently or at pace. Without a clear legislative and policy framework, and a more consistent infrastructure approach, the market is delivering fragmented solutions that are not interoperable and do not offer the benefits of smart and integrated ticketing. Local transport authorities currently have discretion to require ticketing arrangements, which may be smart, but there is no means of ensuring that local transport authorities require smart ticketing arrangements or that such arrangements meet a consistent technological standard (in order to facilitate greater interoperability).

21. The Bill provisions therefore allow for the setting of a national technological standard for the implementation and operation of smart ticketing arrangements. It aims to provide local transport authorities with the tools they need to better manage public transport within their area. It is considered that the responsibility for securing appropriate ticketing arrangements should remain with the local transport authority in order that they can respond to their local needs and that local transport authorities should be given additional powers to develop and implement effective ticketing arrangements and schemes.

22. The Bill also establishes a National Smart Ticketing Advisory Board to advise the Scottish Ministers in relation to the national technological standard and their other functions in relation to smart ticketing arrangements.

Responsible parking

23. The safety and accessibility of all road users is a top priority for the Scottish Government, whilst reducing the risks on the country's roads and pavements forms a key pillar of its efforts to keep people safe from harm. These priorities are evidenced by high level commitments in *Scotland's Road Safety Framework to 2020*.⁵ In addition, *Designing Streets: A policy statement for Scotland*⁶ contains specific measures to reduce casualties for pedestrians and cyclists through improvements which focus on the creation of quality places and prioritising non-motorised road users over the movement of motor vehicles.

24. This is also supported by the Scottish Government's *National Walking Strategy*⁷, in which it published its 10-year Action Plan in March 2016. The plan contains 20 high-level objectives designed to raise the status of walking across urban and rural areas of Scotland. It seeks to prioritise the protection of vulnerable road users to ensure that pedestrians of all abilities and other road users are safer on Scotland's roads.

25. Vehicles parked on footways (pavements) can hinder the safe passage of pedestrians, as well as reducing the independence of vulnerable people, especially the elderly and disabled, as parked cars can damage surfaces, which can result in trip hazards. In October 2015, the UK National Road Safety Committee published a report entitled "*Make Road Safety Count: Spending choices which protect your community*"⁸ which highlighted that:

"Another significant category of casualties not included in those statistics reported by the police is that of slips, trips and falls on pavements and footways, which all too often result in people requiring medical or hospital treatment. Hospital Episode Statistics (HES) data suggests that there has been an increase in people requiring hospital treatment following falls to over 90,000 a year, although the figures should be treated with some caution as they may include some falls in other locations, such as the home."

26. In addition, vehicles that are double parked can impact the safe movement of traffic and can also endanger other road users or obstruct access to vital services.

27. The Bill prohibits double parking and parking on pavements and gives local authorities the powers needed to enforce this important change and improve safety and accessibility for all.

Road works

28. The Scottish Government considers the road network to be one of Scotland's most important assets. Scotland has led the way on the planning and co-ordination of road works, with

⁵ <https://www.transport.gov.scot/publication/scotlands-road-safety-framework-to-2020-framework-summary/>

⁶ <http://www.gov.scot/Resource/Doc/307126/0096540.pdf>

⁷ <http://www.gov.scot/Resource/0045/00452622.pdf>

⁸ <https://www.rospace.com/rospaweb/docs/advice-services/road-safety/practitioners/making-it-count.pdf>

many unique developments including a single register for all road works, and a Scottish Road Works Commissioner (SRWC). While the system in Scotland has many strengths, there is still room for improvement. This was the conclusion of the Barton Review of the Office and functions of the SRWC and the regulation of utility road works in Scotland more generally. The Barton Report⁹, following the review, made 21 individual recommendations which required extensive discussion with stakeholders to fully develop. The measures contained in the Bill improve the quality of road works by encouraging a more effective regime where works are carried out properly first time, where better information about road works is available, and where the SRWC is able to deal more effectively with poor performance.

29. The provisions in the Bill help implement a number of the Barton Report recommendations to improve the regulation of road works and strengthen the powers of the SRWC. On the former, it includes provisions relating to fencing and lighting at road works sites, safety measures, qualifications of roads authority workers, reinstatement quality plans, information about apparatus, and commencement and completion notices. On the latter, it includes provisions giving the SRWC powers of direction through compliance notices, power to issue fixed penalty notices, an inspection function and new inspection powers.

Transport Partnership finance

30. The Transport (Scotland) Act 2005 placed a duty on the Scottish Ministers to create Regional Transport Partnerships and provides for the transfer of functions from local authorities to Transport Partnerships to facilitate a regional approach to the planning and delivery of transport. Despite the multi-annual nature of their activities, Transport Partnerships have encountered differing legal views on whether they are able to hold financial reserves and carry these forward from one financial year to another.

31. The Bill ensures legal clarity so that Transport Partnerships can create and carry forward financial reserves across the financial year-end, as with local authorities currently.

Scottish Canals Board

32. *Making the Most of Scotland's Canals* (2013)¹⁰ updated the Scottish Government's long term aspirations for Scotland's canals, including their contribution to the Scottish Government objectives on tourism, housing, regeneration and the economy. This changed the nature of the Board's functions. Additional flexibility to appoint more members who have relevant experience in relation to the wider role which the Scottish Canals Board now has in the public sector is therefore needed.

33. The Bill enables the Scottish Ministers to vary the size and skills mix of the Scottish Canals Board in order to reflect its expanding remit.

⁹ <https://www.transport.gov.scot/media/10269/srwc-review-consultants-report.pdf>

¹⁰ <https://www.transport.gov.scot/media/30484/j269946.pdf>

POLICY DETAIL AND BACKGROUND FOR SPECIFIC TOPICS

34. Consultations have taken place on all topics within the Bill, in line with the pre-legislative consultation arrangements for introducing primary legislation, with the exception of canals (which is a minor technical amendment). Analysis of the consultation responses informed the policy, alongside direct engagement with stakeholders. More detail is provided under each of the Bill Parts for the topics included within the Bill.

Low emission zones

Policy

35. The policy intention is to enable local authorities to introduce (subject to the approval of the Scottish Ministers) low emission zones in Scotland, to help mitigate air pollution that is predominantly caused by road transport in Scotland's towns and cities. Designation of an area as a low emission zone puts in place an access restriction scheme for that area by reference to specified vehicle emission standards. Only vehicles meeting or exceeding those emission standards (which will be set nationally by the Scottish Ministers) will be permitted to drive within low emission zones.¹¹

36. Low emission zones will help to protect human health; support the achievement of, and progress beyond, compliance with Scottish and European air quality legislative requirements¹², whilst contributing to improvements in road network operations and helping to tackle congestion (in tandem with other transport policies); encourage modal shift towards active travel and public transport; and support placemaking to improve town and city spaces in order to create attractive places to live, work and visit.

Local authority powers to create low emission zones

37. The low emission zone provisions within the Bill seek to put in place nationally consistent standards for low emission zones. The Bill provides for civil enforcement of low emission zones and allows the Scottish Ministers to set nationally consistent standards on matters such as, but not limited to, emissions standards, penalties and exemptions, primarily through secondary legislation. It creates a bespoke administrative framework enabling the establishment, operation and enforcement of low emission zones by local authorities and contains provision for the Scottish Ministers to scrutinise the local authority approach to low emission zone implementation and effectiveness of schemes. Additionally, it gives flexibility to local authorities in determining the zone area, phasing in different types of vehicles (using the scheme's ability to make different provision for different purposes), setting the objectives of the scheme and allowing for the low emission zone to be amended or revoked in the future if required, subject to the Scottish Ministers' approval.

¹¹ Low emission zones can be a viable option to improve air quality (and thus health). The [Airuse \(2017\)](#) literature review by academics across Europe found that low emission zone outcomes are highly dependent on a variety of local factors, such as the low emission zone size, operational scope, traffic data robustness and local metrology. The Berlin low emission zone created a 7% to 10% reduction in NO_x, and one localised study in London identified a 3% to 7% reduction in NO_x. However, low emission zones in 11 Dutch cities did not impact on NO₂ concentrations.

¹² The Scottish Air Quality website provides more information on the topic of air quality legislation at <http://www.scottishairquality.co.uk/air-quality/legislation>

38. The low emission zone provisions within the Bill also enable local authorities to act jointly at the outset in the making of a low emission zone scheme which may cross local authority boundaries, and to also make any amendments to, or revocations of, the scheme, if required.

Mandatory emission standards

39. The Bill allows for nationally consistent vehicle emission standards to be set in regulations for petrol and diesel vehicles. Although the specific emissions standard will be set by regulations and is not specified in the Bill, it may be a reasonable assumption that this will be consistent with the general leading emission standards for low emission zones established in Europe – presently Euro VI/6 for diesel vehicles and Euro 4 for petrol vehicles (i.e. akin to the standards proposed for London’s Ultra Low Emission Zone and the UK Government’s Clean Air Zone framework). The regulation-making powers enable the Scottish Ministers to change the standard in the future to adapt to new technology and as the vehicle fleet composition changes over time with a larger proportion of the fleet emitting fewer emissions. Vehicles failing to comply with the standard will be subject to the enforcement measures (paragraphs 43 and 44) once the low emission zone grace period has ended.

Hours of operation

40. Responses to the *Building Scotland’s Low Emission Zones* consultation in 2017¹³ supported the principle that low emission zones operate continuously, 24 hours a day, seven days a week, all year round, but with the ability for local authorities to vary the hours of operation taking account of local circumstances. The Bill provides for this approach. Guidance will be issued on when it may be appropriate for hours of operation to be varied by a local authority, taking account of issues including displacement and noise. As the Scottish Ministers approve a low emission zone before it comes into effect or is varied, consideration will be given to the appropriateness of proposals on a case-by-case basis.

41. Communication and engagement with stakeholders and the public will be required where local authorities vary hours of operation from the default position of low emission zones operating continuously, 24 hours a day, seven days a week, all year round.

Approved devices

42. Technology is necessary to monitor traffic and identify vehicles in breach of a low emission zone scheme. In order to ensure flexibility to accommodate the fast pace of technology renewal, the Scottish Ministers are permitted to specify by regulations standards for the ‘approved devices’ that may be used in connection with the operation of a low emission zone. It is intended that these regulations will in particular provide for automatic number plate recognition (ANPR) cameras to be used to monitor and enforce low emission zones and these can be used in either a fixed and/or mobile capacity. This will enable the enforcement regime to stand up to scrutiny, legal challenge and appeals as any penalty charge notice would be expected to be underpinned by a record of a contravention produced by an ‘approved device’. This is standard practice for moving traffic offences.

¹³ <https://consult.gov.scot/transport-scotland/building-scotlands-low-emission-zones/>

Enforcement through a civil penalty regime

43. Central to the policy intention for low emission zones is that where a vehicle which does not comply with the emission standard and is not exempt is driven within the designated zone, a civil penalty will be payable (subject to the terms of the scheme as to operating hours, or the temporary suspension of the zone for a major event, etc.). The Bill therefore provides for the creation of a road access restriction scheme for low emission zones. This is based on a civil penalty regime under which a penalty charge notice will be issued in respect of non-compliant vehicles. A penalty charge notice would only be issued if a non-compliant vehicle was driven on a road within a low emission zone and did not fall under a pre-determined set of exemptions that would prevent a penalty being issued. A maximum of one penalty charge per day will be made on any non-compliant and non-exempt vehicle detected within the low emission zone. The Bill allows for a nationally consistent penalty charge notice regarding a non-compliant vehicle in these circumstances. The amount of the penalty will be set, and may be varied, by the Scottish Ministers in secondary legislation.

44. The enforcement regime for low emission zones will (using the power to make different provision for different purposes under section 72) enable different levels of charge to be set for different vehicles, e.g. one charge for cars, another for larger vehicles, HGVs and so on, set through regulations, as well as a graduation of fines or penalties that could be increased for repeat offenders through regulations. Provision is also to be made in regulations for an appeal and adjudication process for vehicle owners to challenge a penalty charge notice. And the Bill allows the penalty monies to be retained by the local authority operating the low emission zone primarily for facilitating the low emission zone objectives, including funding the back office administration costs.

Exemptions

45. The Bill provides for general exemptions to be specified in regulations. This takes account of the complexity and range of exemptions to be considered; allows for further consultation with stakeholders on the range of exemptions suggested in response to the consultation, and allows an opportunity to reflect on the challenges around the enforceability of suggested exemptions.

46. Local authorities' low emission zone schemes may also make provision about time-limited exemptions for vehicles not covered by general exemptions. Time-limited exemptions may be granted and renewed by local authorities on a discretionary basis.

47. The Bill also makes provision to enable a local authority to temporarily suspend a low emission zone for all vehicles for a short period of time for a major event.

Grace periods

48. The Scottish Government recognises that vehicle owners, particularly those resident in the low emission zone, need time to prepare in advance of the commencement of enforcement of penalties. The Bill therefore provides for 'grace periods'. The grace period which applies depends on whether a person is resident within a zone: there will be a lead-in period for all vehicles, but a longer lead-in period applicable only to residents living within a low emission zone.

49. The standard grace period was referred to in the *Building Scotland's Low Emission Zones* consultation as a 'lead-in period' to allow commercial fleet operators and private vehicles owners time to prepare, prior to the low emission zone enforcement phase starting. This may occur through altering their vehicle or fleet, through retrofitting, by planning the purchase of a new vehicle as part of a natural replacement cycle or through modal shift to another form of transport.

50. The Bill requires local authorities to set a grace period for non-residents of no less than one year but no more than four years and an extended grace period for residents of no less than one year but no more than two years after the expiry of the grace period applicable to non-residents. It takes into consideration the views of consultation respondents covering a range of interests, from environmental considerations to those of businesses and individuals. The grace period starts when the low emission zone scheme comes into effect, and its effect is to prevent penalties from becoming payable for a breach of the road access restriction until that period ends. However, other relevant activity may take place within the low emission zone area during the grace period, including monitoring using ANPR cameras to assess the levels of compliance with low emission zone standards prior to the commencement of the enforcement regime. Communication and engagement with road users prior to the enforcement regime starting to encourage compliance with the low emission zone standards is essential and will be undertaken on a national level and by local authorities creating a low emission zone.

51. The extended grace period for residents was referred to in the *Building Scotland's Low Emission Zones* consultation as a 'sunset period', which would allow registered residents who live in the low emission zone further time to prepare of no more than two years following conclusion of the general lead-in period.

Measuring and evaluating effectiveness

52. Evaluation of low emission zones' effectiveness will be based on the achievement of low emission zone objectives, which will be set by each local authority for each low emission zone. As a minimum, the Bill sets a requirement for low emission zone objectives to incorporate a commitment to demonstrate compliance with the Scottish Air Quality legal objectives set in regulations made under Part IV of the Environment Act 1995. Local authorities are required to publish a report annually on the effectiveness of low emission zones.

53. The Bill provides the Scottish Ministers with the power to give directions to local authorities where a low emission zone's objectives are not being achieved, the local authority is not complying with its duties in relation to a low emission zone or its actions in relation to a low emission zone are inappropriate, or where developments in science and technology or other circumstances mean that a local authority's actions are no longer appropriate.

Alternative approaches

54. The Bill provides for the creation of a road access restriction scheme for low emission zones that is based on a civil penalty regime using a penalty charge notice, rather than a road pricing 'charging' scheme, such as that being adopted in England. This would allow non-compliant vehicles to enter the low emission zone if a daily charge was paid by the registered vehicle keeper.

55. Scottish Government policy is not to pursue a road pricing scheme. It is considered that this would not align with the behaviour change implicit in a penalty charging regime and would only promote compliance by those unable or unwilling to pay a charge.

56. Consideration was given to utilising existing legislation, but the current options do not permit the Scottish Government's preferred policy of low emission zone civil enforcement linked to specified conditions applicable to all modes of transport, as:

- the use of Traffic Regulation Orders would involve a criminal offence and does not allow for enforcement 24 hours a day;
- a section 20 order under the Road Traffic Regulation Act 1984 would limit local authority discretion;
- a road charging scheme under Part 3 of the Transport (Scotland) Act 2001 would only promote compliance by those unable or unwilling to pay; and
- Traffic Regulation Conditions applied under the Transport Act 1985 would only apply to buses.

57. Consideration was also given to including in the enforcement Non-Road Mobile Machinery (NRMM) - construction mobile equipment and transport refrigeration units. No provision has been included due to insufficient evidence in Scotland around the source apportionment of emissions from NRMM for both construction and transport refrigeration units. NRMM for construction in particular could be captured in future supplementary planning guidance.

Consultation

58. The *Building Scotland's Low Emission Zones* consultation paper set out the proposed arrangements and options to deliver a consistent national approach to well-designed and managed low emission zones in Scotland. It sought views from stakeholders and the general public on the Scottish Government proposals across key aspects of establishing low emission zones in Scotland. The key findings were:

- Primary low emission zone objective: There was a high level of consensus among respondents with 95.5% supporting the principle of low emission zones to help improve air quality in Scotland. In addition, the majority of respondents agreed that the primary objective of low emission zones should be to support the achievement of Scottish air quality objectives (95.9%). Those who did not consider that low emission zones should also aim to reduce congestion and that the primary objective should go further than the current proposals to further reduce air pollution. Of the individuals against the proposals, many commented on the social inequality aspect and that the proposals would impact on the poorest in society and those who live rurally and travel to the cities. Additionally, the Federation of Small Businesses (FSB) raised issues over financial impacts on its members. It made reference to: the need for a specific fund to support members; the need for national standards to avoid confusion; and, lead-in periods to allow time for businesses to meet standards. The policy is to set national standards and specify that lead-in times (i.e. grace periods) must be included in low emission zone implementation.

- Low emission zone Euro emission standard criteria and vehicle scope: whilst the majority of respondents agreed with the proposed emission criteria, there was a lower level of consensus than on other topics. Some 62.3% of respondents agreed with the proposed mandatory Euro emission criteria for Scottish low emission zones. Of the individuals who disagreed, a key theme was that the standards used in the modelling would not reflect real world driving conditions.
- Low emission zone scheme founding principle – charging versus penalty: respondents were asked whether they supported the principle of adopting a road access restriction scheme for low emission zones across different classes of vehicle. Views were very mixed with people both in favour and against the proposal. Some 42% indicated their approval in some way of the scheme due to the positive impact it may have. A number of respondents made reference to road pricing in their response. Of those in favour of the road access restriction scheme, a number of people commented that this was because they considered a charging scheme allowed people who could afford it to buy an exemption. Respondents also noted that a road access restriction scheme would encourage behavioural change more than a charging scheme. The majority of business and industry groups were supportive of a national road access scheme but emphasised the need for consistency.
- Low emission zone hours of operation: the views provided showed that the most popular suggestion was for low emission zones to operate 24 hours, seven days a week. Many agreed that low emission zones should operate 24/7 either fully or with conditions. These conditions included the need to take local circumstances into account, the need to reduce restrictions at times when there are fewer vehicles on the road and to offer exemptions for vehicles that need to undertake ‘emergency repairs’. Of those who thought low emission zones should operate 24/7, reasons included the need for national consistency to avoid the problematic nature of variable hours.
- Enforcement and vehicle detection: the views provided showed a high level of consensus with 91.6% in favour of using ANPR cameras to enforce low emission zones. Those who disagreed had privacy concerns regarding the use of ANPR cameras. Those in support of ANPR viewed this to be vital for effective enforcement and considered it to be consistent with enforcement of other road offences such as bus lane contravention. Of those who were conditionally supportive, concerns were raised regarding the costs, adequate monitoring and development of an appropriate database.
- Exemptions: respondents were asked to provide their views on what exemptions should be permitted. The majority of respondents, 86.3% agreed that low emission zone exemptions should be consistent across all Scottish local authorities. Some 82.7% of respondents considered that emergency vehicles should be exempt. Other suggested exemptions included: community transport operators, historic vehicles, specialist vehicles and bus and coach operators travelling long distances only passing through a low emission zone for a short time.
- Grace periods: There was support for the principle of lead-in periods; however there was significant variation in opinion as to the appropriate length of these periods. Some agreed that the periods of around four years (set in cities around the world and discussed in the consultation paper) seem fair or reasonable, will potentially be successful if implemented and are realistic. Others suggested shorter periods in order

that air quality improvements could be made more quickly. Respondents commented on the need for government funding or support during lead-in periods – particularly for bus operators. It was felt that grant funding would be required to help achieve compliance by the lead-in periods set out in the consultation document. Linked to this, there were comments on public transport strategies including those re-enforcing the idea that investment in and provision of public transport is needed as a priority alongside low emission zones and that discussions on lead-in times (for residents and non-residents alike) should involve public transport operators to fully understand the timescales they will need to work to.

59. A workshop with Intelligent Transport Systems UK was held to explore options around low emission zone enforcement and a similar workshop was held on low emission zone impact on the bus sector.¹⁴ There has also been on-going engagement with a range of key stakeholders including business organisations, bus operators, the Confederation of Passenger Transport, road haulage representative bodies and COSLA.

60. Partnership working with individual local authorities on introducing low emission zones within the four biggest cities in Scotland (Glasgow, Edinburgh, Dundee and Aberdeen) is on-going.

61. Five tiers of governance have been set up as follows:

- Low Emission Zone Leadership Group – the Scottish Ministers and elected members and key officials from the four cities attend to discuss the overall strategy for low emission zones.
- Four Cities Consistency Group – Transport Scotland and officials from the four cities attend to discuss operational aspects of low emission zones.
- Low Emission Zone Delivery Groups – local authority led groups attended by officials responsible for delivery of the low emission zone and Transport Scotland.
- Low Emission Zone Delivery Forum – city-specific, local authority led stakeholder groups for individual low emission zones. Stakeholders attending including Chambers of Commerce, Federation of Small Businesses, businesses, bus operators and the Confederation of Passenger Transport.
- Individual one to one engagement – with individual stakeholders and the local authority or the Scottish Government.

Bus services

Policy

62. The bus provisions within the Bill fall into two broad headings: measures designed to provide local transport authorities with options to better respond to local needs and measures designed to improve information available on services, making bus travel more attractive or helping local transport authorities to deal with the consequences of service withdrawals.

¹⁴ <https://www.sniffer.org.uk/improving-our-air-quality>

Providing options for local transport authorities

63. The situation for bus services varies significantly across the country in terms of characteristics, such as level of competition between bus operators and between bus and other modes and the quality of service and patronage figures.

64. As such, a ‘one size fits all’ approach is not appropriate. Rather, local transport authorities require a usable set of tools to ensure that their bus services meet local needs. The right approach will differ from one local transport authority to the next.

65. The Bill aims to ensure that local transport authorities have a viable and flexible set of options that help to arrest and reverse the decline in bus patronage, ensuring that there is a sustainable bus network across Scotland. It provides them with opportunities to pursue partnership working, local franchising, or running their own buses, alongside the use of existing options including the ability to subsidise services.

Local authority run bus services

66. A number of local authorities have indicated a desire to run their own buses either directly or via an arm’s length company, much like Lothian Buses. Although a few authorities already run a number of bus services of different kinds under a variety of existing provisions, more report that the existing legislation around this issue is unclear and that this inhibits them from pursuing this option.

67. The ability to run a bus service directly is considered to be particularly beneficial in areas where there is a need for the provision of public transport but there are few or no commercial operators running services commercially or submitting tenders for subsidised services.

68. The Bill gives flexibility to local authorities to address particular local needs where the competitive market is simply not providing the services considered necessary and also provides a broader legal basis for existing authority provided services than the more limited circumstances they presently operate in. It allows local authorities to determine, where there is an unmet need for public transport in their area, to provide services themselves as an alternative to securing them by offering subsidies.

Partnerships

69. The Transport (Scotland) Act 2001 introduced quality partnerships, providing a model for local transport authorities to work with operators to improve the quality and efficiency of local services. A quality partnership scheme allows the transport authority to secure improved services by providing infrastructure improvements and making their use contingent on delivering local quality standards. Uptake of this model has been disappointing, with only five quality partnerships adopted which have had limited success in improving bus services. Stakeholder feedback has indicated a desire to move away from this model and move towards a more flexible and genuine partnership approach.

70. The Bill introduces a new form of partnership working (known as Bus Service Improvement Partnership, or BSIP), which replaces the existing quality partnerships and

provides an updated and revised model for how local transport authorities can work with operators to improve the quality and efficiency of local services. BSIPs involve local transport authorities formulating a plan (called a BSIP plan) with the operators in their area and then deciding on how best to implement it through supporting schemes (BSIP schemes). The plan and scheme(s) are then voted on by operators before the BSIP can progress, so it will be a true partnership which the authority and operators support.

71. BSIPs require the local transport authority to commit to action for the scheme or plan in some way (to assist the operators). However, the requirement that facilities (infrastructure) must be included (as in quality partnerships) is removed to allow local transport authorities to bring forward ‘measures’, for example on car parking, instead of or in conjunction with the provision of facilities. In addition, BSIPs offer an extended range of available ‘service standards’ which can be required of operators, as compared to that in the quality partnership model.

72. BSIPs involve a stronger partnership element than quality partnerships, with operators and local transport authorities required to work together to develop the plans and schemes to improve services in the area and taking responsibility for their delivery. Operators are given a say in whether proposed plans and schemes proceed. Once agreed by a sufficient number of operators, all operators in the area of a scheme must provide services which meet the service standards set in the scheme or in certain circumstances risk losing the right to operate the service through deregistration.

Franchising

73. Franchising is already possible in Scotland via quality contracts, as provided for by the 2001 Act. However, quality contracts have never been attempted in Scotland. While there have been a number of recent calls for local franchising from some local transport authorities and others, feedback from engagement with local transport authorities and from the consultation was that the quality contract system is felt to be too burdensome even to attempt in its current form.

74. The Bill replaces the quality contract model with a new form of local service franchising designed to increase the range of situations in which a local transport authority can consider franchising as an option. The existing quality contract system required the authority to be satisfied before making the scheme that it was *necessary* for the implementation of the authority’s relevant general policies and would implement those policies in a way which was economic, efficient and effective.

75. The Bill lowers the threshold for considering franchising and instead provides a thorough assessment process which the local transport authority must follow to develop deliverable and effective proposals. The assessment must set out, among other things, how and to what extent the making of the franchise will contribute to the implementation of their relevant general policies and the process includes an audit of the financial aspects of the authority’s proposals. Once the assessment process has been completed, the franchising proposal will be assessed by an independent panel who will consider whether the authority has come to a reasonable conclusion in deciding to make such a scheme.

76. The Bill aims to provide a workable procedure while providing for a rigorous scrutiny of proposals. The independent panel (as opposed to Ministerial scrutiny) de-politicises the final decision making.

Information for the public

77. Poor information is cited as a reason why many bus users are reluctant to try buses and it is clear that passengers expect more from their bus services in terms of better information. The Scottish Government wants to ensure that bus users have access to the same levels of information as passengers on other transport modes, making it easier for passengers to find out when their bus will arrive and how much it will cost.

78. The Bill provides powers to require the operators of local services to provide information on routes, timetables, actual running times (real time and in the past) and fares publicly and in a specified format. Ensuring consistency of approach across Scotland will allow the public to access information in a standardised format, free of charge. It can also be used to provide opportunities for innovative developments in using and accessing information and creating or supporting services such as route planners and bus trackers which will make bus services a more attractive option for passengers.

79. In exercising the powers, it is proposed to ensure consistency as far as practicable with similar requirements being developed in England under powers in the UK Bus Services Act 2017 in order to minimise costs and make best use of shared systems, including those of the larger operators which provide services in both jurisdictions. Consideration will be given to developing the existing Traveline Scotland journey planning service as part of the new arrangements.

Information on de-registration

80. In 2011 the Competition Commission (subsequently subsumed within the Competition and Markets Authority), published the result of its Local Bus Services Market Investigation.¹⁵ This recommended that local transport authorities affected by the variation or cancellation of a service should be given powers to obtain specific information about the service from the operator and, in limited circumstances, share it with other people who may wish to bid to provide a similar service to the one being withdrawn.

81. The Bill gives effect to this recommendation by providing affected authorities with the ability to request information about the revenue and patronage of a service following notification that it is to be de-registered or, in certain circumstances, varied. An “affected authority” is defined as a council or regional transport partnership which has functions under section 9A of the Transport Act 1968 or section 63 of the Transport Act 1985 and which has in its area, or as the case may be, region a stopping place which is affected by the variation or cancellation of the registration. Where the authority decides to subsidise a replacement or supplementary service as a result of a service being withdrawn or cancelled, the Bill empowers the authority to disclose the information (subject to appropriate safeguards) to potential bidders for the contract to provide that replacement or supplementary service. These new powers to obtain and share information

¹⁵http://webarchive.nationalarchives.gov.uk/20140403001219/http://www.competition-commission.org.uk/assets/competitioncommission/docs/pdf/inquiry/ref2010/localbus/pdf/00_sections_1_15.pdf

are designed to facilitate more effective competition in the market for supported bus services and to assist affected authorities to ensure the best use of public funds.

Alternative approaches

Removing the 2001 options

82. The evidence is that quality partnerships and quality contracts have not been widely used, so one approach would be to completely remove options, relying solely on the deregulated market. The reason the Scottish Government does not propose this is that the consultation and engagement showed a clear desire to have a set of options to improve bus services, but that the existing framework should be changed.

Wholesale re-regulation

83. There has been a push from some quarters for some form of re-regulation. This is rarely defined in detail, but variations have been considered. The most extreme approach would be for all bus services to be taken into public ownership.

84. Local transport authorities are very supportive of having a broader range of options and from engagement and consultation it is clear that they each have different needs and challenges. Whilst some view public ownership as a helpful option, the majority feels that there is virtue in working with commercial operators through partnerships or franchising.

Voluntary publication of information

85. In relation to the provision of public information, consideration has been given to non-legislative options such as relying on operators to publish information themselves either on a voluntary basis as is done at present or as a result of financial incentives. However, the Scottish Government does not feel that this would deliver the universality and consistency which it considers necessary. It also considers that published information should be brought together in one place and that this would be difficult to secure through voluntary arrangements.

86. Much of the information proposed to be required on de-registered services is already being provided to local transport authorities on a voluntary basis and consideration was given to relying on these existing arrangements. However it was considered that relying solely on voluntary arrangements would not implement the full extent of the Competition Commission recommendations, particularly, as local transport authorities are not currently able to share this information as part of the tender process. Additionally, as the current arrangements are voluntary, there would be no opportunity for enforcement should an operator choose not to provide information at a future point.

The Bus Services Act (2017)

87. In developing the Bill measures, close consideration was paid to the measures in the UK Bus Services Act 2017 (“the 2017 Act”) as there are many commonalities in terms of the challenges around bus provision in Scotland and England.

88. However, as regards partnerships, feedback from the consultation was that only one statutory partnership mechanism should remain in place rather than the two provided for in England by the 2017 Act, and this is what is proposed in the Bill.

89. As regards local franchising, there were already some differences between the quality contract model in Scotland and that in England and Wales. There are also differences in the structure and operation of local and regional governance. Reflecting views expressed in the consultation and unlike the 2017 Act, the Bill provides franchising powers to all local transport authorities in Scotland (local authorities or in some cases Transport Partnerships). Like the 2017 Act, the Bill provides for an external audit of the financial aspects of the franchising assessment to provide a degree of assurance that proposals are based on sound information. It also continues to provide for a final approval stage external to the authority, but moves this from the Scottish Ministers to an independent panel appointed by the Traffic Commissioner.

Powers of direction

90. A number of authorities called for ‘powers of direction’. These were not defined in great detail but have been described as powers to exert direct influence on the shape of a commercial network by making changes to services and routes to better serve the public. It was felt that this degree of interference with operators’ commercial decision-making either required the more robust safeguards which the Bill’s franchising and partnership proposals provide, or some form of financial compensation to reflect the potential additional costs of any such obligations, which in effect amounts to a supported service.

Local authority services

91. Consideration was given to empowering local authorities to operate services requiring a Public Service Vehicle operator’s licence directly without limiting them to services which meet a public transport requirement and would not otherwise be provided. In other words, authorities would be able to provide services in competition with commercial operators.

92. The Scottish Government policy takes into account the views of local authorities, particularly in more rural areas where there can be a paucity of bidders for supported bus tenders and as such seeks to allow local authority run bus services in such circumstances.

Consultation

93. These Bill proposals have been informed by regular engagement with stakeholders including the Confederation of Passenger Transport, Association of Transport Coordinating Officers (ATCO), Bus Users Scotland, Traffic Commissioner Scotland, Traveline Scotland, Transport Partnerships, COSLA, the Mobility and Access Committee for Scotland (MACS) and trade unions (STUC and Unite the Union). A key forum for discussing proposals has been the ‘Bus Stakeholder Group’ which meets twice yearly and is chaired by the Minister for Transport and Islands.

94. A telephone survey of bus service operations with ATCO representatives from across Scotland was undertaken which gave a better understanding of the approach to bus provision in local authority areas, from urban or semi-urban settings to rural and island authorities.

95. The full public consultation on the bus service proposals for the Bill closed in December 2017. A total of 315 responses were received from members of the public, local authorities, transport operators, Transport Partnerships, public bodies and other organisations. Alongside this a number of stakeholder events took place to develop the policy. There were 61 responses submitted by organisations while 254 were received from individual members of the public. One set of campaign responses numbering 1725 was also received using a standard text developed by the environmental group Friends of the Earth Scotland.

96. Throughout and beyond the consultation, further engagement was held with the full range of stakeholders into the first half of 2018. These included Bus Stakeholder Group meetings and one to one meetings with a number of key stakeholders, including local authorities, Transport Partnerships, the Competition and Markets Authority, bus operators, the unions, the Traffic Commissioner for Scotland, as well as on-going discussion with the Department for Transport and Welsh Government, to further explore consultation responses and to further develop measures included in the Bill.

Changes made as a result of the consultation

97. The majority of respondents supported the proposals in the consultation document. However, there were a number of comments on the detail of some elements and, as a result of the consultation and engagement; changes were made to some of the proposals.

98. One broad area was on consultation and transparency. It was clear from many consultation responses that there was a desire to ensure that the passenger is at the centre of the Bill measures. As a result, the processes for consultation and engagement when setting up a partnership or franchise and for reporting when they are up and running were developed. One example of this is that in a partnership or a franchise the authority must publish annual reports (rather than simply submitting them to the Scottish Ministers as in the existing quality partnership model) in order to give full transparency to the effectiveness or otherwise of the intervention.

99. The franchising model was originally intended to retain an approval process by the Scottish Ministers but a number of consultees were concerned about the risk of political influence. On consideration, the proposals were amended to provide for approval by an independent panel appointed by the Traffic Commissioner, an independent statutory regulator.

100. Information on deregistered services will be provided only on request rather than automatically as originally envisaged. This was a result of consideration post consultation and reflected concerns about costs.

Smart ticketing

Policy

101. In 2012, the Scottish Government set out a vision that that all journeys on Scotland's bus, rail, ferry, subway and tram networks can be made using some form of smart ticketing or payment. Despite some adoption of smart payment by transport operators, progress has been limited, with smart ticketing not being developed consistently or at pace. Without a clear

legislative and policy framework, and a more consistent technological standard for smart ticketing, the market is likely to deliver fragmented solutions that are not interoperable and do not offer the maximum benefits of smart and integrated ticketing.

102. There is currently no legislation in Scotland specifically intended to deliver smart ticketing on public transport. There are, however, a number of pieces of legislation which are relevant to the subject.

103. The Transport (Scotland) Act 2001 (“the 2001 Act”) gives local transport authorities powers to create ticketing arrangements (voluntary arrangements between a local transport authority and operators) and ticketing schemes (mandatory schemes made by the local transport authority in terms of which named operators are required to provide the ticketing arrangements specified in the scheme). While not specifying the delivery method for these arrangements and schemes, the 2001 Act does allow for the creation of schemes including a smart ticketing element. It should be noted here that three regional transport partnerships (Strathclyde Partnership for Transport, ZeTrans and SWestrans - established by order made under section 1 of the Transport (Scotland) Act 2005 (“the 2005 Act”)) were given functions under sections 28 and 29 of the 2001 Act by virtue of orders made under section 10 of the 2005 Act.

104. The 2005 Act and the subsequent Scottish Statutory Instrument 2006/107 (The National Bus Travel Concession Scheme for Older and Disabled Persons (Scotland) Order 2006) introduces the Scotland-wide free bus travel scheme for older and disabled people. While, again, this legislation doesn’t expressly require smart ticketing as part of that scheme, it uses equipment meeting the well-established and secure UK standard, ITSO 2.1.4.

Competition Issues

105. In 2011 the Competition Commission published its Local Bus Services Market Investigation. This report identified that in the right conditions, multi-operator ticketing arrangements could help open the bus services market to new entrants (and thereby help address some of the concerns the Commission had about that market). It identified that such arrangements were relatively rare and, where they did exist, had characteristics which limited their effectiveness. The Commission, therefore, recommended giving local transport authorities additional powers to specify the detailed characteristics that mandatory multi-operator ticketing arrangements should have to ensure that they are effective. These characteristics include:

- Governance arrangements;
- Access to schemes;
- Bus-only schemes;
- Zonal schemes;
- Availability and promotion of tickets;
- Ticket types available;
- Pricing.

106. The report also recommended that the Office of Fair Trading review the Ticketing Block Exemption in relation to revenue-sharing arrangements and its application to smart ticketing arrangements. The report recommended that final decisions about ticketing schemes should be taken locally in line with the principles it set out.

107. Since the report was published, the Competition and Markets Authority has issued guidance that makes clear its view that the Block Exemption is wide enough to encompass ‘smart’ tickets and ‘account based ticketing’ where the ticket product being purchased is not determined until after the event for travel undertaken over a specified period (for example where fares over the course of a day are capped at an agreed level).

Bill provisions

108. The Bill requires local transport authorities making a mandatory ticketing scheme under section 29 of the 2001 Act to ensure that all the ticketing arrangements required by the scheme are smart and that they comply with the national technological standard. This may however be complemented by non-smart formats - recognising that some public transport users have a need for such ticketing provision. These provisions help to promote the growth of smart ticketing as a means to access public transport as seen in other countries such as Ireland and the Netherlands. It also gives a more consistent platform for existing and new operators entering the market. This will benefit public transport users and society more generally through greater choice and coverage of smart ticketing, less cash handling and promoting a modal shift to public transport.

109. Provision is also made to create a national technological standard for the implementation and operation of smart ticketing. The intention is that this will facilitate greater interoperability and will help make smart ticketing more consistent and attractive. This does not preclude other technologies and infrastructure using different standards being used within arrangements and schemes. It should be noted that emerging technologies such as mobile ticketing may also be adopted in future.

110. The Bill provisions give local transport authorities additional powers to specify other characteristics of ticketing arrangements and schemes. For example, schemes can include provision: enabling entitlement to travel to be evidenced in particular ways; about the persons to whom payment may be made; about providing information about the arrangements to the public, about the appearance of tickets etc.

111. The Bill establishes the National Smart Ticketing Advisory Body (NSTAB). The Board’s main functions are to advise the Scottish Ministers in relation to the national technological standard and other functions in relation to smart ticketing arrangements. It is intended that the creation of the Board will give relevant stakeholders a more unified voice in relation to the national standard and the delivery of smart ticketing and payment more widely, as well as providing a single point of contact and expert advice for the Scottish Ministers. The Bill provides a power for the Scottish Ministers to make provision in relation to the composition of the Board and the processes for decisions by the Board by way of regulations, following consultation with relevant stakeholders.

112. The Bill requires local transport authorities to report annually on the exercise of their powers to make ticketing arrangements and ticketing schemes. These reports will allow local

transport authorities to highlight progress in their area, identify any obstacles they have encountered and to share models and approaches that have been successful as well as any learning points.

113. This information will be used by NSTAB to monitor progress for the purpose of providing informed advice to the Scottish Ministers in relation to the national technological standard and their other functions in relation to smart ticketing.

114. The Bill provisions also give the Scottish Ministers powers to direct local transport authorities to introduce a mandatory ticketing scheme where a local ticketing need is not being addressed. Giving the Scottish Ministers this power of direction ensures that, where there is clear evidence that a ticketing scheme would have clear benefits but it has not been introduced, or introduced in a successful way, the local transport authority can be directed to exercise its powers to do so. The direction can specify, not only that a scheme should be introduced or varied, but can also specify the type of ticketing arrangement that should be provided under the scheme and the characteristics those arrangements should have.

115. In determining whether to use this power of direction, the Scottish Ministers must consult with NSTAB. Directions must be in writing and published.

116. The Bill also provides for the Scottish Ministers to issue guidance in relation to certain matters connected to smart ticketing.

Impact on modes other than bus and tram

117. The Bill expands the definition of ticketing arrangements to cover connecting rail and ferry services, thereby extending the application of existing local transport authority powers to modes other than bus and tram (Edinburgh Trams are already covered by the existing definition of ticketing arrangements by virtue of the provision made in the Edinburgh Tram (Line One) Act 2006 and the Edinburgh Tram (Line Two) Act 2006). However, operators of connecting rail and ferry services cannot be compelled to provide the ticketing arrangements required by a ticketing scheme. Such schemes will require the agreement of these operators.

118. Where operators of connecting rail and ferry services are part of Scottish Government franchise or contract arrangements, these already include provisions requiring operators to take part in local smart arrangements. For future contracts, the Scottish Government will consider imposing similar requirements where this will not have an adverse impact on that operator's ability to meet those franchise or contract commitments.

119. Where operators of connecting rail and ferry services are part of Scottish Government franchise or contract arrangements, these either already include or should move to include, when next possible, provisions requiring operators to take part in local smart arrangements, where this will not have an adverse impact on that operator's ability to meet those franchise or contract commitments.

120. The Bill also gives the Scottish Ministers the power to further expand or amend the meaning of 'ticketing arrangements' (by way of subordinate legislation) in order to cover new

and emerging transport modes. It also provides the Scottish Ministers with the power (by subordinate legislation) to review and adapt, (following consultation with relevant stakeholders) the membership of the NSTAB to reflect the addition of new modes to the definition of ticketing arrangements.

121. The Bill does not preclude other modes being represented on the advisory board and as such have a role in advising the Scottish Ministers on the creation and maintenance of the technological standards, which will allow multi-modal schemes to exist on a smart basis.

Alternative approaches

National smart payment

122. In meeting their commitment to all public transport journeys being available using some form of smart ticketing or payment, the Scottish Government considered introducing a national interoperable smart payment scheme, using an epurse - a pay as you go system, typically via a smartcard or mobile app which is pre-credited via an online account or other means of topping up or buying credit. This tri-partite commercial agreement (between the Scottish Government, an epurse provider and public transport operators) would have provided the means by which participating operators could offer a consistent smart payment option.

123. The epurse was, however, seen by operators as interfering too far in the commercial market and utilising a technology which was not the best available with the rapid growth of contactless bank card or mobile payments. During the consultation period, the Scottish Government took account of these views and decided not to pursue the national epurse proposal.

124. There are other potentially available national payment schemes that could emerge in future, for example around account based ticketing, but further consideration of any national payment scheme would be required once that technology was more clearly defined.

Incentivising smart ticketing

125. While it is clear that incentivising the cost of smart ticketing would make it more attractive to new customers, the Scottish Government would prefer to see consistent fares across all payment channels to give customers confidence that they can always access the best fare.

126. The Bill's provisions aims to strike a proportionate balance between the needs and expectations of passengers who often desire simplified payment methods and better value for money offerings across all modes, and the costs/risks to a deregulated bus market which requires taking profitability into account.

Local transport authority powers to design ticketing schemes

127. Consideration was given to the approach taken in the UK Bus Services Act 2017 which permits local transport authorities to secure the provision of smart ticketing arrangements but does not require them to do so. However, it is considered that this approach would not deliver the benefits of smart ticketing quickly enough. It is also considered that the 2017 Act approach would not deliver the desired progress towards greater consistency in ticketing arrangements

made by the local transport authority, which the Scottish Government considers is necessary to improve interoperability and help local transport authorities to deliver effective and attractive ticketing arrangements.

128. In terms of the additional powers given to local transport authorities to design effective ticketing schemes, it is appreciated that the Competition Commission recommended that these characteristics should include provision on pricing. However, it is considered that pricing in a deregulated market will inevitably be led by operators, subject to associated measures on bus services. It is not intended to regulate pricing through ticketing arrangements and schemes.

Expanding existing Operator Smart Steering Group

129. The NSTAB will provide a source of valuable, informed advice on the technological standard and in relation to the Scottish Ministers' other smart ticketing functions. Consideration was given to using an expanded version of the existing Operator Smart Steering Group (OSSG), a strategic decision-making group for smart ticketing in Scotland which comprises senior representatives from bus, rail, ferry and subway operators in Scotland for this purpose. However, it is considered appropriate for the Board to be established on a more formal basis in the Bill, to strengthen its position as an advisory board to the Scottish Ministers, and, for the more detailed aspects of its membership and operation to be made by regulations following consultation with all relevant stakeholders.

Non-legislative options

130. Consideration was given to a non-legislative approach, continuing to promote, with the assistance of the OSSG, existing ticketing legislation. This was not progressed as it was considered that this would not address the need for local transport authorities to be given additional powers to design effective ticketing arrangements or the need for a more consistent technological standard for the implementation and operation of local transport authority arrangements. Without these measures, it is considered that the Scottish Government's vision would not be delivered quickly or consistently enough.

Consultation

131. The formal consultation closed on 5 December 2017. A total of 148 responses were received to the consultation, 98 from members of the public; 50 from organisations. Local authorities, transport operators, Transport Partnerships and public bodies were among the responses from organisations.

132. Key findings on smart ticketing:

- A high number of respondents were in favour of further legislation to ensure that operators participated in smart ticketing schemes at both a national and regional level.
- Several respondents provided caveats for their support of the proposals, including that smart ticketing would only promote use of public transport if implemented alongside other measures such as fare capping or integrated travel networks.

- A smaller number of respondents were concerned about the proposals, highlighting issues such as those who can only pay in cash and the difficulty to implement such a scheme nationally.
- Most respondents agreed that the scope of smart ticketing should at first be limited to local bus, scheduled rail journeys, foot passengers on scheduled ferry services entirely within Scotland, as well as the Glasgow subway and the Edinburgh tram.

133. The consultation explored a range of options available to improve the delivery of smart ticketing in Scotland. The responses provided strong evidence that there is demand for regional, multi-operator ticketing. This helped shape the focus on strengthening local transport authority powers to give them better options in setting up ticketing arrangements and schemes.

134. Since the consultation, engagement with a number of local transport authorities and passenger interest groups to discuss the consultation findings and to help further shape the Scottish Government's proposals has taken place. This engagement has again reinforced the need for consistency of approach, clear guidance and strengthening the powers available to local transport authority to promote and deliver multi-operator ticketing.

135. There have been a number of meetings of the OSSG since the legislative plans were first publicised. The OSSG has been kept fully involved in the development of the proposals and consulted regarding the business and regulatory impact assessment (BRIA).

Pavement parking and double parking

Policy

136. Tackling inconsiderate parking, such as parking on pavements or double parking, has been the subject of public consultations over a number of years, with first Ross Finnie MSP in 2010 and then Joe FitzPatrick MSP in 2012, publishing consultations with a view to introducing proposed Member's Bills. In 2015, Sandra White MSP introduced her Member's Bill, entitled the Footway Parking and Double Parking (Scotland) Bill.¹⁶ This took forward the proposals consulted on by Joe FitzPatrick MSP in 2012. Although Ms White's Bill was not enacted into law, there was significant cross party support for the general principles of her Bill demonstrated in the Committee's Stage 1 Report. In the same year, former Minister for Transport and Islands, Derek Mackay MSP, publicly announced the Scottish Government's commitment, if re-elected, to examine the concerns raised by stakeholders around consistency, enforcement, education and reasonableness in order to develop primary legislation.

137. Inconsiderate or dangerous parking can cause serious problems for all road users. The Bill prohibits parking on footways and footpaths, and double parking (defined as parking more than 50 cm from the edge of the carriageway). The provisions take into account the concerns that had been identified by the Local Government and Regeneration Committee and stakeholders during Stage 1 of Ms White's Footway Parking and Double Parking (Scotland) Bill, which fell in

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[http://www.parliament.scot/S4_Bills/Footway%20Parking%20and%20Double%20Parking%20\(Scotland\)%20Bill/b69s4-introd.pdf](http://www.parliament.scot/S4_Bills/Footway%20Parking%20and%20Double%20Parking%20(Scotland)%20Bill/b69s4-introd.pdf)

March 2016 on the dissolution of the Scottish Parliament. The Bill is being taken forward following devolution of legislative competence to the Scottish Parliament via the Scotland Act 2016 (the 2016 Act devolves legislative competence for the parking of vehicles on roads in Scotland to the Scottish Parliament). It also enables local authorities, under order-making powers, to exempt certain footways, from the pavement parking prohibition only, where it is not appropriate given the different circumstances which may prevail across local authority areas, different regions and towns across Scotland.

138. Under the Road Traffic Regulation Act 1984, traffic authorities can use Traffic Regulation Orders to apply local restrictions, which are enforceable when the appropriate road signs and markings are displayed. Traffic Regulation Orders are used by traffic authorities to give effect to traffic management measures on roads within their areas (e.g. single and double yellow lines). The restrictions can be applied for various reasons and could cover particular hotspots or larger areas. They can have effect at all times or during specific periods, and apply to certain classes of vehicles.

139. Local traffic authorities cite that the work and cost involved in producing Traffic Regulation Orders and the cost of the associated signage can be a disincentive to implementing pavement parking restrictions.

140. The provisions within the Bill provide an automatic ban on parking on footways and footpaths and double parking in Scotland removing the need for each local authority to introduce restrictions via Traffic Regulation Orders.

Parking standards

141. The Bill creates a prohibition on parking on footways and footpaths, and double parking across Scotland's road network. Local authorities, under order making powers, will be able to exempt certain footways where the prohibition on pavement parking is not appropriate. The Bill itself does not prescribe the technical specification for exempting footways. This will be set out in Ministerial directions and collated together with guidance to aid implementation.

142. Transport Scotland formed a Parking Standards Group in 2018 comprising representatives from Transport Scotland, COSLA, Living Streets Scotland, Cycling Scotland, Mobility and Accessibility for Scotland, Strathclyde Partnership for Transport and local authorities to collaboratively produce technical standards that promote best practice in relation to the processes surrounding the management and enforcement of on-street parking. This work will be used to inform Ministerial directions on the technical specifications required for footways to be considered for exemption. Ministerial directions and guidance issued under the Bill will be collated together into one document. The document will provide technical information, including qualifying criteria for local authorities to exempt footways from the national prohibition on footway parking. It will also provide diagrams and rationale to support the technical data that is contained in this document to assist parking attendants in the enforcement of the new prohibitions.

Decriminalised parking enforcement

143. Since Police Scotland's decision to remove its traffic warden service as a result of a review on resources in 2013, the number of local authorities which have decriminalised parking enforcement powers has increased from 14 to 20, however, this is expected to increase to 21 at the end of 2018.

144. Decriminalised parking enforcement is a regime which enables a local authority to enforce its own parking policies using parking attendants employed by the local authority or outsourced to a third party on behalf of a local authority. The powers enable parking attendants to issue penalty charge notice to motorists breaching parking controls in specific areas.

145. The regime seeks to ensure that parking policies are implemented effectively. The ultimate objective of decriminalised parking enforcement should be 100% compliance with restrictions resulting in no penalty charge notices issued. In areas of decriminalised parking enforcement, stationary traffic offences cease to be part of the criminal law enforced by the police and instead become civil matters enforced by local authorities.

146. In order to obtain decriminalised parking enforcement powers under the Road Traffic Act 1991 a local authority has to apply to the Scottish Ministers for an order designating the local authority area (or part thereof) 'a permitted parking area' or 'a special parking area' or both 'a permitted parking area' and 'a special parking area'. Once an area is designated a 'permitted parking area', the provisions creating offences connected to failing to comply with orders made under sections 35, 45 or 53 of the Road Traffic Regulation Act 1984 relating to parking places cease to apply and a penalty charge can then be levied by the local authority.

147. The provisions within the Bill intend that the enforcement of the new restrictions should be undertaken by local authorities. The Bill confers on local authorities the power to levy penalty charges. As not all local authorities have decriminalised parking enforcement powers nor the associated resources and infrastructure to undertake enforcement, the Bill enables local authorities to engage third parties to enforce the prohibitions on the local authority's behalf.

148. It is the Scottish Government's intention to undertake a nationwide campaign involving local authorities, Police Scotland and other stakeholder groups on the changes that will impact on parking across Scotland. The campaign will take place prior to commencement of the provisions to ensure there is widespread awareness of the new prohibitions.

Keeping accounts

149. The Bill provisions, through secondary legislation, place a duty on all local authorities to keep accounts, as well as prepare and publish statements relating to the income and expenditure local authorities have received in connection with the enforcement of the new restrictions.

150. Currently local authorities with decriminalised parking enforcement powers have a duty under section 55 of the Road Traffic Regulation Act 1984 to keep accounts of their income and expenditure in connection with decriminalised enforcement in their areas and to 'ring-fence' the income. Any 'surplus' may only be used to make good any amount charged to the general fund over the preceding four years or for certain transport-related purposes including:

- the provision and maintenance of off-street parking;
- where the local authority considers that further provision of off-street parking is not necessary or desirable, the provision or operation of (or facilities for) public passenger transport services, and
- road improvement projects in the local authority area.

151. It is the Scottish Government's intention that any 'surplus' generated through the enforcement of the new prohibitions should remain within the local authority in whose area the penalty charges were levied and that it should be ring-fenced as is currently arranged for decriminalised parking enforcement.

152. As there will be considerable preparatory work needed in connection with the new prohibitions, the Scottish Government proposes that the commencement of these prohibitions should be on a region by region basis across Scotland depending on the readiness of the local authority.

Alternative approaches

153. Existing legislation already enables traffic authorities to implement on-street parking restrictions via Traffic Regulation Orders. However, due to the complexity surrounding parking and the importance of protecting vulnerable road users, the fundamental policy position is to ensure that national prohibitions are in place across Scotland for footway and footpath parking and double parking. The Bill gives effect to this. Given the high level of support for legislation to tackle inconsiderate parking in the public consultation and the remarks from stakeholders and respondents, a national approach appears necessary and desirable to ensure the full realisation of the policy.

Consultation

154. Due to the complexity surrounding the issues of parking enforcement, Transport Scotland formed the Responsible Parking Stakeholder Working Group in 2016 to take forward a collaborative approach to ensure that the Bill provisions are fit for purpose nationally. The membership of the group includes representatives from a wide range of transport practitioners, parking groups, equality groups, freight representatives, business representatives, COSLA and local authorities.

155. The Group's discussions enabled the Scottish Government to better understand how parking is currently managed and enforced across Scotland and to develop proposals to address the concerns that had been highlighted by the Local Government and Regeneration Committee during Stage 1 of Sandra White's Member's Bill on Footway Parking and Double Parking, as well as considering the practicality and workability of the proposals across Scotland.

156. The Scottish Government ran a three month national public consultation¹⁷ from March to June 2017. However, due to the Scottish local elections, the consultation period was extended to

¹⁷ <https://www.transport.gov.scot/consultation/improving-parking-in-scotland-consultation/>

31 August to allow local authorities and Regional Transport Partnerships an opportunity to respond and the analysis report was published on 21 May 2018.¹⁸ The consultation was designed to gather the views of stakeholders and individuals to help inform the Scottish Government's policy on parking and assist in informing future legislation to tackle pavement and double parking. The document posed 25 questions, which sought views on the following issues:

- How parking is currently managed across Scotland;
- Existing legislation on parking;
- Policy on how parking enforcement will operate in the future;
- Opportunities to effectively tackle misuse of disabled parking provision, and
- Parking opportunities to encourage the uptake of ultra-low emission vehicles.

157. The findings associated with the misuse of disabled persons' parking and ultra-low emission vehicles are being taken forward separately.

158. Feedback on the consultation was received from organisations and people across civic society, such as individuals and local authorities. The consultation received 663 responses.

159. The majority of the respondents (524) agreed that parking is a problem, and that most (461) encountered this problem on a daily basis. It was noted that 537 respondents believed that new legislation is required to resolve the issues surrounding inconsiderate parking. Of these, a substantial number of respondents (457) agreed that any new legislation should cover all roads and footways, including private roads. While there was general support for new legislation, a number of respondents (287) disagreed with the proposal that local authorities should carry out exemptions to specific streets or areas from the proposed national restrictions for pavement parking.

160. Furthermore, (548) respondents agreed that there should be a consistent approach to parking enforcement in Scotland. Of those that agreed that consistency in enforcement of parking is needed, there was a split in how this should be achieved with 48% of those that responded to the question supporting the roll-out of decriminalised parking enforcement across the country or leaving it to Police Scotland to enforce.

161. A small number of respondents from the consultation disagreed with the roll out of decriminalised parking enforcement highlighting the system is more sustainable in cities rather than rural areas. Others thought it may be abused by councils as a fundraising exercise.

162. However, other respondents, including Police Scotland, stated that rolling out decriminalised parking enforcement could deliver a national level of consistency and ensure the safe movement of traffic. There was a suggestion that local authorities should retain the flexibility to choose whether decriminalised parking enforcement is suitable for their areas. The Bill enables local authorities to make arrangements for the sharing of enforcement services. This will assist local authorities without decriminalised parking enforcement to enforce the new prohibitions.

¹⁸ <https://www.transport.gov.scot/publication/improving-parking-in-scotland-consultation-analysis-report/>

163. The majority of the respondents (59%) highlighted the benefits of introducing the proposed prohibitions without identifying groups with particular needs or protected characteristics. There was recognition that children should be equally protected, and there was agreement that the impact of the prohibitions would benefit children's health and wellbeing through unimpeded access and greater opportunities to walk or cycle.

Road works

Policy

164. Scotland's road network is one of the most important assets of the built environment. The fabric of the road network needs to be maintained, which is challenging for Scotland's 34 roads authorities¹⁹ in the current economic climate.

165. Road works are necessary, not only to maintain the road asset, but also to allow utility companies to inspect, maintain, and repair their plant and apparatus. In order to minimise the impacts of any road works, there needs to be good planning and coordination between utility companies and roads authorities, and the provision of timely and accurate information for road users and others.

166. In September 2015 Derek Mackay, then Minister for Transport and the Islands, when appointing a new Scottish Road Works Commissioner, also commissioned an independent review of the office and functions of the SRWC. The Minister was keen to build upon existing strengths, and in particular to improve on the regulation and enforcement of road works.

167. The independent review was carried out by Jim Barton, a former senior chartered engineer with Transport Scotland, and a figure well respected in the road works community. The Barton Report²⁰ made a number of recommendations to improve the regulation of road works in Scotland including: improvements in the availability of information; measures to support improvements in the quality of road work reinstatements; improving enforcement and strengthening the existing powers available to the SRWC and to roads authorities. This work underpins the road works policy in the Bill.

168. The measures on road works contained within the Bill can be brigaded together under two broad headings. Firstly, there are measures to improve the enforcement of road works by enhancing the functions and powers available to the SRWC. Secondly, the Bill puts in place measures designed to improve both the quality of the road works themselves and also the information which relates to these works.

Improving the enforcement of road works

Juristic status of the SRWC

169. The 2005 Act created the office of SRWC, to which an individual is appointed by the Scottish Ministers. It follows that the office already has a legal personality which is distinct from

¹⁹ Scotland's roads authorities comprise the 32 local authorities, the Tay Bridge Authority, and the Scottish Ministers as the roads authority for trunk roads.

²⁰ <https://www.transport.gov.scot/media/10269/srwc-review-consultants-report.pdf>

the natural person appointed to the role. However, all of the individuals appointed to the office of SRWC have raised concerns about how sufficiently clear the legal separation is between the individual holding office and the office itself. Despite assurances on this from the Scottish Government, the concern has persisted. The legal and personal consequences for the individual have been sufficient to cause some personal anxiety to the individuals, which the Scottish Government is keen to avoid by taking steps to put the matter beyond any doubt. The Bill, therefore, adds a short sentence to clarify that the SRWC has legal personality and is different from the natural person appointed to the office.

Inspection function

170. The SRWC currently has no independent means of establishing the facts in relation to levels of compliance other than matters that are reported to the SRWC, or information supplied in response to a request issued under section 18 of the 2005 Act.

171. The Bill confers an inspection function on the SRWC to be used to help establish the facts in relation to specific instances of suspected non-compliance, and to help monitor levels of compliance by roads authorities and undertakers more generally.

172. The Bill also places a requirement on the SRWC to provide the Scottish Ministers with an annual report on any inspection activity undertaken.

Inspection powers

173. In order to assist the SRWC in the discharge of the new inspection function, along with any member of the SRWC's staff appointed to assist with inspections, the Bill confers a number of inspection powers. The inspection powers provide a legal basis to underpin day-to-day activity including access to road work sites, and the ability to inspect documents, and to ask those present on site to do anything necessary to facilitate the inspection.

174. The Bill only confers the minimum inspection powers which are thought might be needed in a road work site setting. They do not provide any right of access to a private residence, for example. The expectation is that, in practice, most inspection activity will be carried out on a consensual and co-operative manner. However, it is sensible to provide statutory powers to ensure that the results of any inspection are fairly and lawfully obtained and that the extent of any inspection powers is easily understood.

Appointment of inspectors

175. It may not be appropriate or practical for the SRWC to carry out all of the inspection activity in person, particularly where inspection activity may be required to be carried out across Scotland. The Bill, therefore, allows the Scottish Ministers to designate members of the SRWC's staff as inspectors.

Protection for officers

176. The application of inspection powers could result in the SRWC, or any staff appointed to assist the SRWC, doing things that might normally leave an individual open to criminal or civil proceedings being taken against them. The Bill provides protection from civil and criminal

proceedings to anyone exercising inspection powers providing they are exercising the powers lawfully, have taken reasonable skill and care in doing so, and have acted in good faith. The provisions afford a degree of protection for the SRWC and any staff exercising inspection powers where the courts are satisfied that the prerequisite conditions have been satisfied.

SRWC powers to issue compliance notices

177. The SRWC may currently give directions in relation to the duties of roads authorities and undertakers to co-ordinate road works under sections 118 and 119 of the 1991 Act.

178. The Bill seeks to widen the use of direction as a form of enforcement by giving the SRWC a new power to issue ‘compliance notices’. This power will be available where the SRWC considers that a person is failing, or has failed, to comply with any specified duty under the 1984 or 1991 Act. The SRWC may wish to recognise that the organisation needs time to make any necessary changes to bring its road work activity into compliance but where it remains non-compliant then some form of enforcement action may be inevitable.

179. The Bill makes provision to appeal any compliance notice imposed and to ‘stop the clock’ on any time limit imposed through the compliance notice. The form of appeal will be by application to a sheriff or summary sheriff. While the Bill provides a formal mechanism to appeal any compliance notice, the expectation is that there will be a period of dialogue between the SRWC and any undertaker or roads authority prior to the SRWC issuing a compliance notice setting a time limit for the organisation to meet. This should mitigate the risk of appeal against the imposition of any deadline given in a particular compliance notice.

180. Failure to comply with any compliance notice imposed, without a reasonable excuse for that failure, is made a criminal offence under the Bill. The maximum penalty on conviction in summary proceedings is to be a fine of £50,000 and on conviction on indictment is to be an unlimited fine. However, the SRWC is separately given powers to issue fixed penalty notices in order that a non-court disposal may be offered in relation to any alleged offence. In respect of non-compliance with a compliance notice, the level of any fixed penalty is to be set at a maximum of £100,000. While this is a significant amount for a maximum fixed penalty notice, it is designed to mirror the intended maximum level at which the SRWC can impose a civil SRWC penalty for breaches of requirements under sections 118 and 119 of the 1991 Act. The Scottish Ministers intend consulting on regulations to increase the level of the Commissioner’s existing civil penalty from £50,000 also up to £100,000. This means that both the civil penalty and the fixed penalty notice introduced under the Bill have the same maximum at £100,000. As the SRWC’s existing civil penalty sanction cannot be offered as a non-court disposal to a criminal offence, the Scottish Government is providing the ability for the SRWC to issue a fixed penalty notice to provide an alternative to submitting a report to the Procurator Fiscal.

181. The proposed framework provides the SRWC with options in circumstances where a penalty may be contemplated, but the SRWC feels that it may lead to a better outcome, without fettering the ability for further enforcement action, if a compliance notice were issued providing a period of at least 28 days or more for the organisation to sort out its particular shortcomings and be brought into compliance. If the organisation remains non-compliant, the SRWC has the option of issuing a fixed penalty notice up to the same maximum as the SRWC maximum civil

penalty, or referring the matter to the Procurator Fiscal where there is sufficient public interest in doing so.

Fixed penalty notices

182. The Bill provides the SRWC with power to issue fixed penalty notices for relevant offences under the 1991 Act. The SRWC is also able to issue fixed penalty notices in response to non-compliance with a compliance notice as described above. This provides an alternative to prosecution so that organisations can deal with their business regulatory non-compliance out with the criminal court system. This ensures that the criminal courts only consider the most serious offences where other remedies have proved ineffective at bringing organisations into compliance.

183. The provision of powers in relation to fixed penalty notices is also relevant to less serious offences. The Bill confers an inspection function on the SRWC or anyone appointed to assist the SRWC in the exercise of that function (paragraphs 173 and 174). This means authorised persons will be visiting road work sites where they may witness offences under the 1991 or 1984 Acts. These are likely to be relatively minor offences suitable for disposal through a fixed penalty notice as an alternative to prosecution. At least initially, it is envisaged that those inspecting road work sites will simply report the facts to the SRWC, who will then decide on whether to offer a fixed penalty notice to ensure that such decisions are taken on a consistent basis.

184. The offences which are covered by fixed penalty notices and the maximum level set for each offence can be set through secondary legislation.

Reports to the Scottish Ministers

185. Part of the deterrent associated with any enforcement regime is the reputational damage suffered as a consequence of being caught and punished. This is particularly true in terms of business regulatory compliance where the reputation of the organisation for competent delivery may contribute to the overall success of the organisation as a whole. Feedback from stakeholders suggests that the fear of being associated with poor performance can have more of a deterrent effect than the punitive sanction itself. The Bill seeks to maximise the deterrent value of reputational risk in a number of ways, including increases in the level of the civil penalty that the SRWC can impose, along with the deterrent effect associated with the possibility of prosecution in the criminal courts.

186. Feedback from road works technical managers within organisations suggests it is often necessary to elevate issues to board level in order to achieve a sufficiently authoritative decision which will provide sufficient impetus to deliver real change in behaviour at road work sites. This is particularly true where organisations sub-contract much of the actual delivery. The Bill, therefore, maximises reputational risk by conferring the option on the SRWC of being able to report the worst offenders to the Scottish Ministers. This is deliberately designed to create a situation which will elevate the issue of non-compliance to board level to involve those who are sufficiently senior in any organisation to ensure that behaviours on the road when executing works are changed. It is envisaged that, on receiving such a report from the SRWC, the Scottish Ministers would want to know from the organisation concerned what it intended to do to bring the organisation into compliance.

Improving the quality of road works and information relating to them

Fencing and lighting at road works sites

187. From a road user perspective, utility company works on Scottish roads are often indistinguishable from those being carried out by the local roads authority. However, unlike Highway Authorities in England, roads authorities in Scotland do not have a statutory duty to meet regarding the fencing and lighting of their own road works sites. They can set certain requirements for those persons they authorise to carry out road works on roads they are responsible for, but there is not a similar duty in place for their own road works. The Bill seeks to address this by inserting a new duty for roads authorities in Scotland as an amendment to the Roads (Scotland) Act 1984 (the 1984 Act). One of the themes to emerge from the Barton Report was that there should be parity where possible between the regulatory regimes applying to utility companies and roads authorities. One of the main areas where there should be consistency of approach is site safety which exists to protect road works and road users.

Safety measures – codes of practice

188. The Bill provides for the Scottish Ministers to issue or approve codes of practice relating to safety at roads authorities' own road work sites. It is not envisaged that the current code will need much if any adaptation in order to be directly applicable at the sites of roads authority works. However, the code will be reviewed to ensure it is fit for purpose before being made compulsory at roads authority road work sites.

Qualifications of roads authority workers

189. Under the New Roads and Street Works Act 1991 (the 1991 Act), for every utility road work site there must be at least one utility operative on site that is qualified to carry out the work undertaken. Work must also be supervised by an appropriately qualified utility supervisor, although the supervisor does not need to be on site. There is no equivalent provision which applies to roads authority road works. Utility companies and their representatives have argued that, across a number of aspects of road works regulation, a level playing field should apply. The Bill creates an obligation within the 1984 Act on roads authorities when carrying out any road works which could have an impact on the fabric of the road. The obligation is to ensure that the works are supervised by someone who has a relevant qualification as a supervisor, and that there must be at least one individual on site at all times when work is being carried out who has a relevant qualification as a trained road operative (relevant qualifications will be prescribed through subordinate legislation).

Commencement and completion notices

190. Both utility companies and roads authorities are required to place notices regarding their proposed road works into the Scottish Road Works Register (SRWR) (paragraph 192). The initial notice, entered into the register, which includes a proposed start date, depending on the type of works, can result in up to a seven-day period of ambiguity about when the road works are actually going to take place. This confusion is an obvious source of frustration for those who are particularly interested in when any particular road work is taking place. This includes inspectors from the roads authority who visit road work sites based on notices placed in the SRWR only to find the work has not commenced, public and commercial transport managers, and other road users.

191. Road users including bus operators, local authority public transport managers, and freight operators, are directly impacted by road works which they unexpectedly encounter on their planned or chosen routes. This can lead to delays, interruptions to scheduled bus services and can contribute to congestion. A recent report by Professor David Begg, *The Impact of Congestion on Bus Passengers*²¹, estimated that road works contribute to around 7% of congestion. That figure may be surprisingly low given the perception of road users responding to the public consultation. Congestion contributes significantly to the economic cost of bus, freight and other road users. Road works are not the only cause of congestion. Professor Begg's report attributes over 75% of the cause of congestion to excess traffic.

192. The Bill seeks to improve the availability of road works information and introduce greater certainty about when road works are taking place, and when they are complete and the road returned to traffic through commencement and completion notices. It does this by introducing two key changes - to require that notices of the actual start, and separately the completion, of works, are to be placed in the SRWR within a prescribed period of work starting or being completed.

Reinstatement quality plans

193. While there are some good examples of best practice which has led to an improvement in the quality of utility reinstatements, the practice is not universal and the quality of utility reinstatements across Scotland is variable and in some instances is quite poor. Both roads authorities and utility companies have a duty under the 1991 Act to protect the structure of the road and the integrity of apparatus in it. Therefore, those undertaking the work in the road, both undertakers and roads authorities, must reinstate appropriately to protect the structure of the road.

194. The quality of utility reinstatements is measured through a combination of roads authority routine and ad-hoc inspections to satisfy it that the road has been properly reinstated. Results obtained through the National Coring Programme have been variable and several penalties have been issued by the SRWC linked to the poor performance of reinstatements.

195. Data available in the SRWR on roads authority inspections of reinstatements highlights a significant number of inspection failures, many due to aspects of reinstatement. Utility companies are required to guarantee the quality of their reinstatement work. The period of guarantee depends on the depth of any excavation. A guarantee period of two years is given on shallow excavations, and a three year period is provided on deeper excavations. The guarantee period is set out in a statutory code of practice.

196. Failures of this type are costly and time consuming for the roads authority, the undertaker and the travelling public. The emphasis within a series of measures designed to improve the quality of reinstatements is on getting it right first time. The Bill introduces a requirement on utility companies to produce reinstatement quality plans to evidence that they have the necessary processes and competence to execute road works and reinstate the road to the required standards.

²¹ https://greenerjourneys.com/wp-content/uploads/2016/06/TTBusReport_Digital.pdf

197. The contents of reinstatement quality plans will be set out in subordinate legislation. The Scottish Ministers have asked the Road Authorities and Utilities Committee for Scotland to consider and develop proposals on the required contents of reinstatement quality plans.

Information about apparatus

198. The Transport (Scotland) Act 2005 (the 2005 Act) made provision for establishment of the SRWR, requiring that road works authorities and undertakers co-ordinate and plan their works via this one single national register. The 2005 Act confers the function of keeper of the register on the SRWC.

199. The SRWR is a GIS (map based) database which over time has been refined through user involvement to develop functionality to suit the day-to-day needs of users as well as meeting their statutory obligations. One of these additional modules is called the Community Apparatus Data Vault (Vault). Vault contains information from across the road works community on the location of apparatus both under and over ground. This is a tool used widely across the sector; however, it cannot be regarded as complete as there is no obligation for organisations to provide this information.

200. The SRWR is the single national register for the co-ordination of road works; however, there are a host of different systems used in order to provide information on existing plant, and no obligation to provide the information to the SRWR or the SRWC. Organisations use plant information at both the planning stage and the construction stage of works. Plant information is key to road works in terms of health and safety and managing the public asset of roads in Scotland.

201. The Bill requires utility companies to place records of their plant and apparatus on the SRWR. It also makes provision for those who come across plant and apparatus during the course of their works which is not recorded on the register to inform the owner of the plant and ensure that a record of it is placed onto the SRWR.

Alternative approaches

202. Consideration was given to whether it was necessary to provide the Scottish Ministers with specific powers to intervene having received a report from the SRWC on the worst offenders of non-compliance. The deterrent value of the reputational risk to any organisation is considered to be sufficient without the Scottish Ministers taking on further specific powers to deliver punitive sanctions. One alternative scenario could be, for example, where the ability of an organisation to conduct road works on the Scottish road network is contingent on being registered with or licenced with the Scottish Ministers and also maintaining good levels of compliance. There would, however, be a significant resource overhead in setting up and maintaining a regime of this type. There is already a significant deterrent within the measures contained within the Bill without the need for a comprehensive system of registration or licensing.

203. The Barton Report contained two recommendations which split opinion more than others – the guarantee period provided by undertakers on the quality of their reinstatements should be extended and the level of fixed penalty notices imposed by roads authorities should be increased.

Neither of these proposals requires primary legislation as both can be implemented through existing secondary legislation and codes of practice.

204. At present undertakers are required to guarantee their reinstatements for either two or three years depending on the depth of excavation. Roads authorities argue that the guarantee periods should be much longer – perhaps up to 10 years long. On the other hand, undertakers argue that there is a lack of empirical evidence to show that reinstatements which do not fail within the current guarantee period go on to fail once the guarantee period has expired. The consultation proposed current arrangements should be replaced with a single guarantee period of six years. In policy terms the extension of guarantee periods is linked to the introduction of quality plans which are part of the measures contained in the Bill. If undertakers are able to get the reinstatement right first time, then the length of guarantee period becomes relatively academic.

205. On the issue of fixed penalty notices, some roads authorities do not currently issue any, arguing that the current level of penalties do not cover the administrative costs associated with issuing the penalties. This leads to inconsistent practice across Scotland. Undertakers argue that increases in fixed penalty notices will just increase the cost of doing business. In policy terms, fixed penalty notices are designed to have a deterrent effect and a punitive value. However, they should be applied in a way which avoids them simply becoming another cost of doing business.

206. The application of extended guarantee periods and increases to fixed penalty notices is subject to further consultation when considering the necessary secondary legislation and codes of practice. The introduction of these measures will be phased with the measures contained in the Bill.

Consultation

207. The provisions in the Bill help implement some of the recommendations of the Barton Report, which required extensive discussion with stakeholders to fully develop. Transport Scotland already had a pre-existing policy development group made up of key stakeholders from the road works community. The membership of this group comprises the roads authority and utility chairs of the Roads Authority and Utilities Committee for Scotland, the SRWC, the Chair of the Scottish Road Works Register Steering Group, representatives from the Society of Chief Officers of Transportation, and the National Joint Utility Group. To develop consultation proposals, the membership of this group was expanded to take on further representatives from Roads Authorities and Utilities organisations.

208. The policy development group first met to discuss the Barton Report on 5 October 2016 and has subsequently met on eight further occasions. The initial task for the group was to turn the general recommendations in the Barton Report into specific policy proposals for consultation. The initial political and stakeholder focus was on recommendations to increase the guarantee period offered by utility companies on the quality of their reinstatements. Proposals to extend the guarantee period do not require primary legislation and do not form part of the Bill. The Scottish Ministers wanted the consultation to be seen as the package of sectoral reforms envisaged under the Barton report rather than a specific consultation on just those recommendations which required primary legislation to implement.

209. The purpose of the consultation was to ensure adequate care is taken to protect the road, whilst affording the utility companies the ability to protect and maintain their apparatus. Whilst road works are inevitable, it is important to drive forward quality consistently through all types of works and reduce the impact to the public as much as possible. The consultation was split into six main categories, listed below:

- Improving quality;
- Improving the availability of information about road works;
- Improving consistency;
- Enforcement;
- New function for the SRWC;
- Miscellaneous – technical amendments.

210. A 12-week public consultation took place between July and October 2017. With only a few exceptions, there was strong support for most of the proposed measures contained in the consultation. Responses were more mixed in relation to proposals to improve the availability and accuracy of information in the SRWR. In particular, proposals to require the notification of actual starts and completion of works, and validity periods were not so popular. Concerns raised by respondents were around fears over likely cost and complexity, and a loss of flexibility to plan works to take account of changing circumstances. Subsequent discussions with key stakeholders suggest that most of the concerns can be addressed through a sympathetic pace of implementation that keeps pace with emerging technology to allow the electronic submission of notices from the work site itself. The implementation of the notification of actual starts and works closed will be through secondary legislation and are subject to further consultation.

Transport Partnership finance

Policy

211. The Transport (Scotland) Act 2005 (the 2005 Act) provided for the creation of regional Transport Partnerships – bodies whereby local authorities and other stakeholders take a strategic approach to transport in each region of Scotland. It also provided for the transfer of (transport related) functions from local authorities to Transport Partnerships to facilitate a regional approach to the planning and delivery of transport including devising a Transport Strategy for their region, and carrying out any statutory functions conferred on them by order. Such functions may relate to, for example, entering into quality partnership schemes, or entering into public services contracts etc. A list of further examples is set out in section 10(5) of the 2005 Act.

212. This regional approach could include involvement in major transport infrastructure projects. Such projects may be delivered over a number of years. Given this multi-year aspect of their work, it is sensible to provide Transport Partnerships with the necessary tools to ensure that there is sufficient flexibility in their finances as they move from one accounting year to another; and to be able to utilise in-year surpluses to create reserves to support future funding requirements.

213. The funding of Transport Partnerships is covered in section 3 of the 2005 Act. This prescribes that the net expenses of a Transport Partnership in each financial year are to be paid by constituent councils or, where there is only one council, by that local authority. The net expenses are expenses in each financial year that are not met through, for example, Scottish Government grants or any other income.

214. Feedback from Transport Partnerships is that section 3 of the 2005 Act requires amendment to make it clear that Transport Partnerships are able to record an annual surplus or a deficit, and to manage reserves. The wording of section 3 has allowed different views to emerge as to whether Transport Partnerships may build up any reserve, regardless of how that reserve has been accumulated. The Scottish Ministers wish to put beyond doubt the ability of Transport Partnerships to have sufficient financial powers to enable the financing of capital infrastructure investments. The Bill provisions aim to address this, leading to improved regional transport planning and delivery.

215. Other than the specific financial provisions applied to Transport Partnerships under the 2005 Act, no other local government finance legislation applies to them. This includes the powers in the Local Government (Scotland) Act 1975 in relation to allowing local authorities to set up capital, repairs and renewals, and insurance funds.

216. This issue is particularly acute for the Strathclyde Partnership for Transport, which operates a significant multi-year capital programme. Strathclyde Partnership for Transport is unique among Transport Partnerships in that it is regularly involved in delivering significant transport functions and services, such as the operation and maintenance of the Glasgow Subway and four major bus stations in its area.

217. The Bill seeks to address this by extending these local government finance provisions to the Transport Partnerships, which enables them to establish:

- a capital fund which can be used to pay for any expenditure to which capital is properly applicable, or in providing money for repayment of the principal of loans (but not any payment of interest on loans);
- a renewal and repair fund, to be used for the purpose of paying for expenditure incurred, from time to time, in repairing, maintaining, replacing and renewing any buildings, works, plant, equipment or articles belonging to the Transport Partnership;
- an insurance fund, can be used where the Partnership could have insured against a risk but have not done so, paying for any loss or damage suffered, or expenses incurred, by the authority as a consequence of that risk; or paying premiums on a policy of insurance against a risk.

218. The other Transport Partnerships were created along with a legal framework to allow certain functions to be transferred to them over time by their constituent local authorities. With the exception of the South West of Scotland Transport Partnership and the Shetland Island Transport Partnership, where certain functions were transferred from Dumfries and Galloway and Shetland Islands Councils respectively, the transfer of functions has not taken place. However, there remains the scope for any of the Transport Partnerships to request additional

functions to be transferred to them whereby the ability to build a financial reserve and to carry over funds from one financial year to the next would be helpful.

219. The Bill provides the Transport Partnerships with greater flexibility and control over financial accounting along similar lines to local authorities. It removes any perceived need for Transport Partnerships to have a zero balance at the end of each financial year which will benefit the planning and delivery of major transport infrastructure projects, such as the Glasgow Subway modernisation programme.

Alternative approaches

220. The alternative to this proposal is to do nothing and retain the status quo. Transport Partnerships would still be able to function without making this change, yet none of the policy benefits outlined above in terms of more effective channelling of finances for transport planning and delivery would be realised.

Consultation

221. A full three-month public consultation on the measures ran from October 2017 to January 2018. Transport Scotland also wrote to all seven Transport Partnerships, 32 local authority Directors of Finance, COSLA, the Society of Local Authority Chief Executives and the Society of Chief Officers of Transportation in Scotland making them aware of the consultation paper and inviting their views.

222. Four questions were asked as part of the consultation. These were whether the proposed changes were thought necessary; whether the Transport Partnerships might benefit from other aspects of local government finance provisions; whether there should be any limitations on the surplus the Transport Partnerships could carry over; and whether safeguards are required to limit the financial liability of local authorities towards Transport Partnership expenses. Sixteen responses were received to the consultation. All responses were supportive of the proposal to clarify that Transport Partnerships should be able to build up and carry over a financial reserve from one financial year to the next. Responses to the other questions were less clear.

Scottish Canals Board

Policy

223. *Making the Most of Scotland's Canals* (2013)²² updated the Scottish Government's long-term aspirations for Scotland's canals, including their contribution to the Scottish Government objectives including tourism, housing, regeneration and the economy.

224. The Board was originally established with a range of functions in relation to GB-wide inland waterways, ports and harbours but, since the separation from England and Wales in 2012, has only exercised functions in relation to Scotland, with a smaller membership. The changing nature of the Board's functions (as with the focus on regeneration, housing and tourism) requires

²² <https://www.transport.gov.scot/media/30484/j269946.pdf>

additional flexibility to appoint more members who have relevant experience in relation to the wider role which Scottish Canals has in the public sector.

225. The Bill allows the Scottish Ministers flexibility in the make-up of the Scottish Canals Board, enabling them to expand the experience and knowledge on the Board should this be required. This expanded size is likely to allow the Scottish Ministers to appoint the executive team to the Board which will enable the expansion of the skills, accountability and transparency of the Board.

226. The ability to vary the size of the Board also enables the Scottish Ministers to alter the structure of the Board in the future in line with public sector commercial developments. The changes should also result in a strengthening of the corporate governance of the organisation by involving the executive team in the development of high level strategy.

Alternative approaches

227. Consideration was given to making an order under the Public Services Reform (Scotland) Act 2010, but the timing of the Bill provided an appropriate alternative. A non-legislative solution was also considered but increasing the size of the Board without changing the restrictions on it was not possible. Removing these restrictions through the Bill allows the Scottish Ministers flexibility to ensure the structure of the board reflects the level of skills and accountability required.

Consultation

228. The Scottish Canals Board and executive team have been consulted and are content with the proposals.

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

Equal Opportunities

Socio-economic issues

229. All seven topics covered within the Bill have considered the need for an Equality Impact Assessment (EQIA) and where required, they are being undertaken. The Transport Partnership Finance provisions and the Scottish canals provisions have been assessed as having no socio-economic issues associated with them (based on engagement with key stakeholders and due to the technical nature of the provisions).

230. The EQIA relating to low emission zones suggests that the low emission zone provisions of the Bill will not have any substantial negative impact on any group as listed under the protected characteristics in the Equality Act 2010. The *Building Scotland's Low Emission Zones* consultation suggested that disabled people might be negatively impacted (and should as such be considered for an exemption from the emission standards); with some respondents also noting that disabled people who did not qualify for a blue badge might be negatively impacted. The consultation also noted that there could be potential social inequality issues. Whilst poorer and

more vulnerable people currently suffer disproportionately from the impacts of poor air quality and low emission zones may reduce this impact on them, there is a risk – as noted by Health Protection Scotland in its consultation response²³ – that low emission zones may exacerbate existing inequalities among disadvantaged groups including the socio-economically deprived, disabled people, those with pre-existing poor health, especially where such people might rely on older vehicles that might be excluded from a low emission zone and suffer from an existing lack of access to alternative means of transport. As part of the Fairer Scotland Duty (Part 1 of the Equality Act 2010, which came into force in Scotland from April 2018), further assessment of the low emission zone policy impact on people will be taken into consideration in developing the regulations setting exemptions, and in approving proposed schemes which include provision about time-limited exemptions.

231. The intention of the bus proposals is to give local authorities the toolkit to enable them to improve bus services throughout Scotland. The EQIA for the bus proposals identified that, if these aims are achieved, there is the potential to impact positively on all groups, including lower socio-economic and other societal groups who rely more on public transport (three-quarters of which journeys are by bus). The EQIA did not identify any group that would be adversely affected by the new legislation.

232. The smart ticketing EQIA identified that access to technology may be a challenge to those on a low income but the Scottish Government is clear that smart should always be one of a range of options which should continue to include paper ticketing. Incentivising ‘smart’ fares which are not available to all customers is something that can be done in a deregulated market, but the Scottish Government will continue to work with operators to ensure that those without access to technology can still access best available fares. Smart ticketing gives operators more flexibility to tailor products to specific groups more easily than is the case with existing paper options. For example, the Through-care project in Renfrewshire is a smart ticket offered on the Young Scot card which provides the care leaver with specific travel benefits while also promoting equality through being offered on the same card used by their entire peer group.

233. The Scottish Government has engaged with stakeholders throughout the pavement parking and double policy development process. Equality considerations have regularly been discussed with the Responsible Parking Stakeholder Working Group and Parking Standards Group covering a number of EQIA questions in the Improving Parking in Scotland consultation. The parking EQIA has not identified any group that would be adversely affected by the new legislation. The Scottish Government is clear that effective management and enforcement of parking restrictions will benefit pedestrians and cyclists through unimpeded access, improved safety and wellbeing. The measures will enable local authorities to exempt roads from the national ban, but this will be based on strict criteria which the Scottish Government is continuing to develop in consultation with stakeholders to ensure that opportunities for increasing sustainable economic growth through town centre regeneration is balanced with improved safety for all road users.

²³https://consult.gov.scot/transport-scotland/building-scotlands-low-emission-zones/consultation/view_respondent?show_all_questions=0&sort=submitted&order=ascending&q_text=health+protection+&uuId=116926197

234. With regard to road works, the provisions in the Bill help to implement some of the recommendations of the Barton Report. In taking forward his independent review of the Office and functions of the SRWC consultant, Jim Barton engaged with a wide range of stakeholders including equality and disability interests. No specific socio-economic issues relating to road works were identified as part of the independent review, beyond the wider societal issues that people equally benefit from access to the road network and utility services. The balance has to be found between the disruption and inconvenience of road works and the rights of utility companies to maintain and repair their apparatus in order to supply necessary services in homes, schools and hospitals.

Disability issues

235. The Transport Partnership Finance provisions and the Scottish Canals provisions have been assessed as having no disability issues associated with them (based on engagement with key stakeholders and due to the technical nature of the provisions).

236. The consistent national standards that will be set to support the implementation of low emission zones will include the consideration of exemptions to protect specific user groups that may be disproportionately affected by the access restrictions.

237. Most of the bus service provisions will not raise disability issues. The publication of more bus information for passengers may benefit the development of accessible technology. Where regulations are introduced as a result of the information provisions, further EQIA consideration will be required.

238. In relation to smart ticketing, existing and new smart technology must take consideration of the requirements of a wide range of users. Having a national standard, which promotes consistency, should benefit development of accessible technology. People with disabilities have been using smart ticketing to access the Scotland-wide free bus travel for a number of years without evidence of any significant difficulties. Disability issues will be considered further when the national standard is being drafted and published.

239. The pavement parking and double parking provisions within the Bill are expected to benefit disabled people with improved accessibility and safety. The provisions deliver an automatic ban on pavement and double parking. Local authorities without decriminalised parking enforcement powers will be able to share enforcement arrangements with local authorities with decriminalised parking enforcement. Work is also underway on the development of Parking Standards, which will be used by all 32 local authorities to assist in delivering best practice in the management and enforcement of parking across Scotland.

240. There are road works provisions in the Bill which deal with safety at road work sites, and the professional qualifications of road operatives and their supervisors. This includes the need of road users and pedestrians, including the needs of those with disabilities. As well as creating a duty on these issues for roads authorities (there are existing duties on utility companies), the Bill provides for regulations and the issue of codes of practice to provide more detailed guidance.

Human rights

241. The Transport Partnership Finance provisions and the Scottish Canals provisions have been assessed as having no human rights issues associated with them (based on engagement with key stakeholders and due to the technical nature of the provisions).

242. The proposals for the creation and enforcement of low emissions zones permit the imposition of civil penalties by local authorities. These are likely to be categorised as either civil obligations or criminal charges for the purposes of Article 6 of the European Convention on Human Rights (ECHR) which guarantees a fair hearing in respect of the determination of such obligations and charges. The Bill contains a power for the Scottish Ministers to put in place safeguards in respect of the civil penalty regime, including a right to object to the issuing of the penalty and a subsequent right of appeal (if the objection is not upheld) to an Article 6 compliant tribunal. It is considered that these safeguards will be sufficient to meet the requirements of Article 6.

243. The low emission zone proposals also entail a restriction on the use of individuals' property which may fall within the ambit of Article 1 of Protocol 1 to the ECHR. The protection of property rights under Article 1 is not absolute, and restrictions on these rights may be permitted provided they have a legitimate aim and are proportionate to that aim. The design and implementation of low emission zones will be a matter for local authorities who must be satisfied that schemes have appropriate objectives and are designed in a way that achieves those objectives in a proportionate way.

244. In relation to bus services, the Bill provides the Traffic Commissioner with powers to cancel the registration of an existing service in certain circumstances in relation to partnerships. Where there is a franchise framework in effect, existing operators must cease to provide local services unless they are awarded a franchising agreement. These provisions potentially engage the protection of property rights under the ECHR. However, these rights are not absolute and if there is an interference with those rights this can be justified where it is in the public interest, proportionate and is in accordance with the law. The Bill respects those principles.

245. So far as potentially engaging the ECHR right to a fair hearing, in relation to the new decision making powers of the Traffic Commissioner to record, refuse or cancel registrations in respect of partnership service standards, the Bill provides a power to make regulations about appeals. Rights of appeal already exist in respect of decisions made by the Traffic Commissioner in relation to penalties, and these will continue to apply to powers provided in relation to this Bill.

246. Human rights issues in relation to smart ticketing have been considered but none have been identified.

247. The proposals for the enforcement of the parking prohibitions permit the imposition of civil penalties by local authorities. These are likely to be categorised as either civil obligations or criminal charges for the purposes of Article 6 of the ECHR which guarantees a fair hearing in respect of the determination of such obligations and charges. The Bill provides for a power for the Scottish Ministers to put in place safeguards in respect of the civil penalty regime, including

a right to object to the issuing of the penalty and a subsequent right of appeal (if the objection is not upheld) to an Article 6 compliant tribunal. It is considered that these safeguards will be sufficient to meet the requirements of Article 6.

248. The enforcement of road works currently relies on a mix of criminal offences and fixed penalty notices taken forward by roads authorities, and civil penalties of up to £50,000 available to the SRWC. The Bill creates a number of new criminal offences which can be reported to the Procurator Fiscal by the SRWC and also potentially increases the maximum civil penalty available to the SRWC to £100,000 (depending on the level set under regulations for fixed penalty notices issued for breach of a compliance notice). As such, Article 6(1) convention rights are particularly relevant. The Bill also provides for non-court disposals through fixed penalty notices for the new criminal offences that are open to the SRWC to report for possible prosecution. The Bill and existing regulatory framework provide for an appeals process for the civil enforcement remedies, including rights to appeal against SRWC penalties and, under the Bill, the right to appeal to a sheriff or summary sheriff against the imposition of a compliance notice. There are existing appeals processes within the Scottish criminal justice system should there be any criminal proceedings. The Scottish Government is therefore satisfied that the road works enforcement provisions in the Bill are compatible with Article 6.

249. The Crown Office and Procurator Fiscal Service was consulted about the proposed road works enforcement provisions within the Bill.

250. The Bill also confers new enforcement powers on the SRWC and authorised inspectors. These include, in particular, a power of entry which may in some cases engage Article 8 ECHR (protection of private life, etc.). To the extent that these powers may in individual cases give rise to an interference with Article 8, it is considered that they can be justified. They are in accordance with the law, both being set out on the face of legislation and the circumstances in which they may be exercised being sufficiently defined and foreseeable. They have a legitimate aim, that being the investigation of breaches of regulatory requirements in a criminal and civil context. And they are necessary in a democratic society in pursuit of that aim, being both tightly drawn and narrowly targeted at the types of inspection most relevant in a road works context, as well as subject to safeguards against arbitrary exercise, in the form of a requirement to obtain a warrant from a sheriff or summary sheriff, in cases where the right to privacy is most acute (i.e. in relation to private business premises). It is therefore considered that the inspection provisions in the Bill are compatible with Article 8.

Island communities

251. The Transport Partnership Finance provisions and the Scottish Canals provisions have been assessed as having no island communities issues associated with them (based on engagement with key stakeholders and due to the technical nature of the provisions).

252. No issues have been identified in relation to low emission zones and island communities. No air quality management areas have been declared on Scottish islands and none are likely to be, given the geography and building layout.

253. The Bill applies to all communities across Scotland, including island communities. No differential impact on island communities is anticipated for bus aspects of the Bill provisions.

254. With legislation being somewhat ‘bus focused’, it may be that island local transport authorities do not see it delivering the same range of benefits where ferry is a key mode of local transport. However, much of local ferry provision is already within government control and, where it is not, operators will be represented through the advisory group and be able to take part (voluntarily) in arrangements and schemes. Smart ticketing infrastructure has only recently become available so the Scottish Government anticipates greater progress with the ferries element of smart ticketing and, in turn, the benefits of interoperability.

255. The Bill provisions on pavement parking and double parking make no distinction between the various communities of Scotland. An island local authority participated in the consultation exercise and raised generic rather than island-specific issues and concerns about the enforcement of the pavement parking and double parking proposals. As such, the Bill provisions are not considered to result in specific issues for island communities.

256. The road work provisions in the Bill apply equally to the Scottish islands as they do to mainland Scotland. No islands-related considerations have been identified and none were raised as part of the consultation.

Local government

257. The Transport Partnership Finance provisions and the Scottish Canals provisions have been assessed as having no local government issues associated with them (based on engagement with key stakeholders and due to the technical nature of the provisions).

258. The low emission zone provisions provide new powers to enable local authorities to introduce civil enforcement of low emission zones.

259. In relation to bus services, the Bill amends and extends the existing powers for local transport authorities to support bus services in their areas, providing them with a range of options to better respond to local needs. It also makes provision for them to obtain information from operators where services are deregistered. The Bill does not place any new duties on local government in relation to bus services.

260. The smart ticketing provisions within the Bill amend and extend the existing powers for local authorities to deliver multi-operator ticketing in their areas, providing them with a range of options to better respond to local needs. It introduces a new duty on local government to report annually on ticketing arrangements and schemes. The level of reporting is not expected to be onerous on local transport authorities.

261. The pavement parking and double parking provisions within the Bill make provision for the creation of a new framework for the civil enforcement by local authorities of new restrictions on pavement and double parking. They introduce new duties on local authorities who currently do not have decriminalised parking enforcement powers, including a duty on local authorities to

report annually on the enforcement of the restrictions. The level of reporting is not expected to be onerous on local authorities.

262. The road works provisions within the Bill confer two new duties on roads authorities: one in relation to safety at road work sites, the other in relation to professional qualifications for roads authority operatives and supervisors. Although these are new duties, they describe existing best practice which most roads authorities already comply with on a voluntary basis.

Sustainable development

263. Based on engagement with key stakeholders, and the technical nature of the Transport Partnership Finance provisions and the Scottish Canals provisions, they have been assessed as having no sustainable development issues associated with them.

264. Low emission zones will reduce air pollution, making a positive contribution to improving health and helping to fulfil Scotland's legal responsibilities to meet air quality objective limits as soon as possible.

265. The maintenance and growth of local bus networks through the bus services provisions will help to support wider sustainable development. The Bill provides local transport authorities with a range of options to better respond to local needs, helping them support bus services in their area.

266. Providing a national standard for the implementation and operation of smart ticketing arrangements and giving stakeholders a clear role in advising the Scottish Ministers on the development of that standard should give existing and new operators confidence that their investment in smart will be beneficial to the growth of their business.

267. The parking provisions set out within the Bill take due account of environmental legislation. Parking policies form an essential part of local authorities' transport strategies which are subject to strategic environmental assessments and allows for consideration of the full range of environmental impacts.

268. Carefully managed road works help support sustainable development. They help strike a balance between the need to protect the road network as an asset, whilst maintaining and extending the utility networks necessary for domestic and business use.

269. Further details on the Bill's impact across all seven topics, on matters such as sustainable business, economic growth, inequalities and gender equality are explored in the EQIA, BRIA and strategic environmental assessment which are being finalised and refined and will be published²⁴ shortly after introduction of the Bill.

²⁴ www.transport.gov.scot/transportbill

This document relates to the Transport (Scotland) Bill (SP Bill 33) as introduced in the Scottish Parliament on 8 June 2018

TRANSPORT (SCOTLAND) BILL

POLICY MEMORANDUM

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